

# STATE OF WISCONSIN

## Fair Housing Plan



Update to the  
2010-2014  
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)
DHCD	Division of Housing and Community Development (State)
DHFS	Department of Health and Family Services (State)
DFI	Department of Financial Institutions (State)
DOA	Department of Administration (State)
DRL	Department of Regulation and Licensing (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
HOPDA	Housing Organization and Direct Assistance Program
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
WHOA	Wisconsin's Open Housing Law

# Fair Housing Plan

## ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING AND ACTIONS TO OVERCOME THEM

### INTRODUCTION | WHAT IS FAIR HOUSING?

Discrimination, in this sense, is any housing practice or action that is unlawful under Title

*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.*

VIII of the Civil 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 regardless of race, color, religion, sex, disability, familial status, or natural origin of similar incomes to have available to them the same housing choices.

### Historical Overview

States and communities that receive Community Development Block Grants (CDBG) prepare Consolidated Plans for the U.S. Department of Housing and Urban Development (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 the first and subsequent years 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<sup>1</sup> and metropolitan counties<sup>2</sup> within Wisconsin prepare their own Consolidated Plans.

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

<sup>1</sup> 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

<sup>2</sup> Dane, Milwaukee, and Waukesha County

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 Housing and Community Development conducted in conjunction with the 2010-2014 Consolidated Plan. HUD's publication, *The Fair Housing Planning Guide* served as the basis for developing this document.

## State Agency Contact

The agency contact for the Consolidated and Fair Housing Plans is:

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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;
- educate and raise awareness among the public, public officials, advocate 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 Housing and Community Development 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
- 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 that of entitlement communities. For example, whereas an entitlement community may be addressing local zoning regulations, the State is reviewing only the state statute that enables 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.

Before launching into a review of state statutes, discrimination and demographic data, and current actions, it is important to address the somewhat clouded relationship between affordable housing and fair housing.

### **Affordable Housing and Fair Housing Issues: Where Is the Line?**

One of the problems in defining fair housing issues is separating out affordable housing issues. Opinions of various authorities on the relationship between these two threads range from some that contend that they are not related to those who believe that the two are so intertwined that separation is impossible.

For example, a number of communities in Wisconsin, particularly in suburban areas around larger cities, 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. Other steps have been taken as well in fast-growth areas, such as increasing lot sizes and setbacks and establishing minimum square foot requirements for new residences. The state's "home rule" provisions mean that zoning ordinances are left to the judgment of local governments.

The net effect of these local actions has been to make housing more expensive than might be the case without the new fees and regulations. In addition, the State has sanctioned

their creation through new legislation and constitutional policy. Thus, for people in lower income brackets, new housing in these communities becomes unaffordable. However, do these policies create a fair housing issue?

In Wisconsin, the median household income in 2007 of African-American-headed households was 52% of that of white-headed households, and for Hispanic-headed households, median household income was 69% of that headed by Whites.<sup>3</sup> Nationwide, the median net worth of households headed by an African-American or Hispanic is at best one-tenth of the median net worth of households headed by Whites.<sup>4</sup> In short, racial minorities have fewer assets and income than the majority population, and thus are less likely to be able to purchase homes in communities with impact fees than White-headed households.

This example demonstrates a concept in fair housing called disparate impact. There are two “tests” that courts commonly use when addressing fair housing cases: disparate treatment and disparate impact.

**Disparate treatment** is generally more straightforward and tangible than disparate impact. In court or administrative law settings, four steps are reviewed when attempting to determine whether housing discrimination occurred:

- The complainant belongs to a protected class.
- The complainant applied for and was qualified to rent or buy the property.
- The complainant was rejected.
- The dwelling remained available afterward.

**Disparate impact** is the concept that a rule or regulation that, appearing neutral on its face, nonetheless has a discriminatory impact on a protected class. Common examples are a landlord’s rule that only one person may occupy a bedroom (potentially discriminating on the basis of familial status) and zoning ordinances restricting occupancy in a unit to persons related by blood or marriage (potentially precluding a group home).

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<sup>3</sup> U.S. Census Bureau. 2000 Census.

<sup>4</sup> U.S. Census Bureau, *Net Worth and Asset Ownership of Households*.

The concept of disparate impact may be extended further. Citing a federal court decision, an attorney for a major law firm wrote:

**Disparate impact means that an action that might appear nondiscriminatory on its face still violates the law if the action affects more protected persons than non-protected persons, or affects protected persons in a significantly greater proportion than it affects the general population.<sup>5</sup>**

Thus, in this example, it could be construed that, since fewer minorities (as a class) could afford housing in Wisconsin communities with impact fees and larger lot size and square footage requirements, these local rules are increasing segregation. In short, they could be discriminatory.

However, this extended definition of disparate impact may not constitute an impediment to fair housing choice. The definition of fair housing choice is “The ability of persons regardless of race, [etc.]...*of similar incomes* to have available to them the same housing choices.” Thus, White- and minority-headed households of similar incomes would not be impacted differentially by increased costs due to regulations. Finally, rules and regulations that may have a disparate impact may not technically be discriminatory, if nondiscriminatory justification can be offered.

*PROOF OF A DISCRIMINATORY IMPACT DOES NOT MAKE THE RULE OR REGULATIONS AUTOMATICALLY ILLEGAL. THE LANDLORD OR MUNICIPALITY MAY STILL TRY TO ARGUE THAT THE RULE IS JUSTIFIED BY SOUND BUSINESS OR GOVERNMENTAL CONCERNS INDEPENDENT OF THE DISCRIMINATION. THE COMPLAINING PARTY MUST THEN SHOW THAT THESE REASONS ARE PRETEXTUAL OR THAT THE LANDLORD’S OR MUNICIPALITY’S LEGITIMATE PURPOSE CAN BE ACCOMPLISHED THROUGH MEASURES THAT HAVE A LESS DISCRIMINATORY IMPACT.<sup>6</sup>*

Though increasing the affordability of housing would tend to give more housing options to protected classes, this report will focus on actions of the State that have direct impacts on fair housing.

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<sup>5</sup> Letter by Attorney Richard M. Price of Peabody and Brown, dated March 1, 1995. Reprinted in *Today’s Fair Housing Rules: What You Don’t Know Can Hurt You*, pp. III-11-12.

<sup>6</sup> “A Layperson’s Guide to Fair Housing Law,” 1994 Edition, by John Marshall Law School, Fair Housing Legal Support Center. Reprinted in *Today’s Fair Housing Rules: What You Don’t Know Can Hurt You*, p. II-41.

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## 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.<sup>7</sup> 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.

### 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.<sup>8</sup>

#### 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.<sup>9</sup> 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.<sup>10</sup>

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<sup>7</sup> 42 U.S.C. § 3604 – 3606 (2008)

<sup>8</sup> Fair Housing Accessibility First. Available at [www.fairhousingfirst.org](http://www.fairhousingfirst.org).

<sup>9</sup> “Design and Construction Requirements; Compliance With ANSI A117.1 Standards; Final Rule.” Federal Register. Volume 73 No. 207.

<sup>10</sup> Id.

**Guides that HUD has declared as safe harbor for compliance:<sup>11</sup>**

- “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
- “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)<sup>12</sup>
- 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, substantially are equivalent to federal accessibility guidelines.

**Wisconsin Open Housing Law**

Chapter 106, Subchapter II 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 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, MARTIAL STATUS, FAMILY STATUS, LAWFUL SOURCE OF INCOME, AGE OR ANCESTRY AND IT IS THE DUTY OF THE POLITICAL*

<sup>11</sup> Id.

<sup>12</sup> 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.”

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*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 DEEMED 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.

**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.”<sup>13</sup> “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...”<sup>14</sup>

### **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, 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.

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<sup>13</sup> Wis. Stat. §§ 66.0125 (2004)

<sup>14</sup> Wis. Stat. § 106.50(1) (2009)

\* Classes only protected under Wisconsin State Law

TABLE 1 | COMPARISON OF PROTECTED CLASS DEFINITIONS

Federal Class	State Class	Similarities and Differences
-	Ancestry*	Not applicable
-	Marital Status*	Not applicable
-	Age*	A member of a protected class who is at least 18 years old <sup>15</sup>
-	Sexual Orientation*	Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference <sup>16</sup>
-	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 <sup>17</sup>
Color	Color	Federal and State are the same
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. <sup>18</sup> 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. <sup>19</sup>
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..." <sup>20</sup>
National Origin	National Origin	Federal and State are the same
Race	Race	Federal and State are the same
Religion	Religion	Federal and State are the same
Sex	Sex	Federal and State are the same

<sup>15</sup> Wis. Stat. § 106.50(1m)(am) (2009)

<sup>16</sup> Wis. Stat. §111.32(13m) (2009)

<sup>17</sup> Wis. Admin. Code § 220.02(8) (Nov. 2006)

<sup>18</sup> 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.

<sup>19</sup> Wis. Stat. § 106.50(g) (2009)

<sup>20</sup> Wis. Stat. § 106.50(k) (2009)

## Prohibited Discriminatory Actions in Wisconsin

**Sales and Rentals.** 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 terms, conditions, or privileges for sale or rental of a dwelling
- Providing different housing services or facilities
- Falsely denying that housing is available for inspection, sale, or rental regarding the entry or prospective entry into the neighborhood of a protected class of persons
- 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.** In addition, 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 residential real property
- Refusal to purchase a loan
- Setting different terms or conditions for purchasing a loan

**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.

**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.<sup>21</sup>

## **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

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<sup>21</sup> HUD v. Dutra et al. 1996 WL 657690 (HUDALJ)

- 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 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, and owner-occupied housing of four or less units, are exempt from the provisions of the Fair Housing Act (with some exceptions, particularly concerning advertising). Wisconsin’s law specifically includes single-family housing.

**Covered Activities.** Wisconsin’s fair housing law expressly includes the sale of property insurance as a covered activity. The federal Fair Housing Act is vague on whether or not a property insurance company, by restricting its sales in certain areas, violates the Act. Some insurance advocates state that the McCarran-Ferguson Act precludes federal regulation of insurance through the Fair Housing Act, but rulings from the U.S. Court of Appeals in the Sixth and Seventh Circuits have supported the Fair Housing Act being applied to property insurance discrimination.

**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.<sup>22</sup> On the other hand, 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, a change, as a result of the 1988 amendments to the Fair Housing Act, led HUD to de-certify 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."<sup>23</sup> 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.<sup>24</sup>

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. Although the Equal Rights Division had submitted the proposal to HUD before it passed, the

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<sup>22</sup> 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.

<sup>23</sup> State of Wisconsin Legislative Audit Bureau, *An Evaluation of Fair Housing Services*

<sup>24</sup> Letter from HUD's Office of Fair and Equal Opportunity to the Wisconsin Department of Workforce Development Equal Right Division. January 30, 2007.

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 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 section 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 complaint 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, although the complainant can 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 fair 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 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: [http://www.dwd.state.wi.us/er/discrimination\\_civil\\_rights/open\\_housing\\_law.htm](http://www.dwd.state.wi.us/er/discrimination_civil_rights/open_housing_law.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 American 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 1980, 1990, and 2000 decennial census, 2005-2007 American Community Survey, University of Wisconsin Extension's Applied Population Laboratory, U.S. Department of Labor's Bureau of Labor Statistics' Labor Force Statistics, Wisconsin's Department of Workforce Development, and Wisconsin Realtors Association.

### 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 the entitlement communities<sup>25</sup> within its borders, it is near impossible in many cases to separate many

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<sup>25</sup> **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

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, the entitlement counties of Dane, Milwaukee, and Waukesha were omitted from the demographic and economic analysis because these counties receive federal funding to cover all the local jurisdictions within their boundaries.

Furthermore, it is important to look at the entire Upper Midwest, consisting of the states of Illinois, Indiana, Michigan, Minnesota, and Wisconsin, to provide a larger context for analysis and to serve as a comparison to the State, especially with respect to population and housing stock changes to have a regional gauge of the changing conditions of our society. **Table 2** summarizes the population in 2000 and 2008 for the Upper Midwest states.

TABLE 2 | POPULATION DISTRIBUTION IN THE UPPER MIDWEST<sup>26</sup>

Geography	2000		2008 Estimates	
	Population	Percent	Population	Percent
Upper Midwest	38,721,376	100.0%	40,130,137	100.0%
State of Wisconsin	5,363,675	12.7%	5,627,967	13.0%
Wisconsin Counties <sup>27</sup>	3,352,691	62.5%	3,531,452	62.7%

In 2008, the State of Wisconsin's population was estimated to be 5,363,375, which is an increase of about 4.9% from 2000. In comparison, the Upper Midwest experienced a 3.6% population gain during this time. Since 1990, the State of Wisconsin's population has increased by 15.0%, from 4,891,769 persons in 1990 to 5,627,967 in 2000.<sup>28</sup>

### Racial Composition

Many indicators reveal that the State of Wisconsin and the surrounding areas are growing more diverse. The racial composition of both the State of Wisconsin and the surrounding Upper Midwest states are similar:

- In 2005, 24.8% of the metropolitan population resided in Wisconsin's principal cities; 81.2% of the metropolitan minority population resided there.
- Forty-eight percent of the area's African Americans and 41.5% of the area's Latinos live in principal cities.

<sup>26</sup> U.S. Census Bureau. 2008 Population Estimates

<sup>27</sup> Excludes Entitlement Counties

<sup>28</sup> U.S. Census Bureau. 1990 Census. 2000 Census. 2008 Population Estimates.

- In 2000, The State of Wisconsin's black-white dissimilarity index (a commonly used measure of segregation) varied greatly from city to city ranging from 21.8 in Brookfield to 83.0 in Franklin.<sup>29</sup> According to the Lewis Mumford Center for Comparative Urban and Regional Research, "A value of 60 (or above) is considered very high. It means that 60% or more of the members of one group would need to move to a different tract in order for the two groups to be equally distributed. Values of 40 or 50 are usually considered a moderate level of segregation."<sup>30</sup>

An examination of demographic changes reveals significant racial shifts occurring in the State:

- Native Americans experienced the most pronounced increase in population between 2000 and 2007 increasing by 36.3%.<sup>31</sup> During this timeframe, the Asian population grew by 24%, but still comprises only 2% of the State's residents.<sup>32</sup>
- The Hispanic and Latino population represents 4.9% of the State's population and grew by 41% from 2000-2007.<sup>33</sup>
- African Americans are the largest non-white group in the State, accounting for 6% of the population. From 2000-2007, the African American population grew by 9%.<sup>34</sup>
- The white population increased slightly by 3.88% between 2000 and 2005.<sup>35</sup>

**Table 3** encapsulates the population growth characteristics experienced in the State of Wisconsin between 1980 and 2007 with data extracted from the University of Wisconsin Department of Rural Sociology Applied Population Lab's data application entitled WisStat<sup>36</sup> and the 2005-2007 American Community Survey.

<sup>29</sup> William H. Frey and Dowell Myers' analysis of Census 2000; and the Social Science Data Analysis Network (SSDAN).

<sup>30</sup> Lewis Mumford Center for Comparative Urban and Regional Research. University of Albany.

<sup>31</sup> U.S. Census Bureau. 2000 Census.

<sup>32</sup> Bill Glauber and Ben Poston. "U.S. Census figures show state's Hispanic population rising."

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> U.S. Census Bureau. 2000 Census

<sup>36</sup> Data obtained from WisStat includes county-level tables STF-1 from the 1980 and 1990 Census of Population and Housing and SF-1 from the 2000 Census.

TABLE 3 | POPULATION CHANGE FROM 1980-2007 BY RACE

	1980	1990	2000	2005-2007	% Change 1980-2007
White	3,066,984	3,150,675	3,427,931	3,192,565	4.09%
Black	26,736	37,462	53,588	66,088	147.19%
Native American	22,467	30,520	38,242	29,174	29.85%
Asian and Pacific Islanders <sup>37</sup>	7,656	26,910	45,490	89,831	1073.34%
Other	13,051	15,127	35,665	54,324	316.24%

Over the past 27 years, Wisconsin has seen a significant increase in its minority populations that, in some cases, exponentially outpaces the growth of its white population. However, from 2000-2007, Wisconsin has lost 23.71% of its Native American population and approximately 7% of its white population.

**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.**

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 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.

<sup>37</sup> Although the most recent Census survey classifications separate the Asian and Native Hawaiian or Other Pacific Islanders races into two separate categories, the 1990 and 1980 Census survey classifications lump these two racial groups into one category. For comparison purposes only, the 2000 Census and 2005-2007 American Community Survey racial categories of "Asian Alone" and "Native Hawaiian or Other Pacific Islander" were added together in this table.

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**: The most 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.<sup>38</sup>

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 covenants<sup>39</sup>, redlining by banks and insurance companies<sup>40</sup>, discrimination in real estate and rental practices, racially segregated public housing, blockbusting<sup>41</sup>, Federal Housing Administration<sup>42</sup> and Veterans Administration mortgages, urban renewal<sup>43</sup>, freeway

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<sup>38</sup> Jackson 1985; Massey and Denton 1993; Yinger 1996

<sup>39</sup> Racially restrictive covenants required buyers of property contractually to sell their homes only to people of particular races.

<sup>40</sup> 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.

<sup>41</sup> 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.

<sup>42</sup> 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).

<sup>43</sup> 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)

<sup>44</sup> The departure of white families usually from urban neighborhoods undergoing racial integration or from cities implementing school desegregation

<sup>45</sup> Exclusionary zoning are laws that establish maximum density and minimum lot size requirements restrict opportunities for low-income households, thus effectively discriminating against minorities.

<sup>46</sup> 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.

<sup>47</sup> Massey and Denton 1993

<sup>48</sup> Yinger 1995

<sup>49</sup> Krivo and Kaufman. “Housing and Wealth Inequality: Racial-Ethnic Differences in Home Equity in the United States.” August 2004.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

<sup>55</sup> U.S. Census Bureau. 2000 Census.

construction, white flight<sup>44</sup>, central city disinvestment, and exclusionary zoning<sup>45</sup>/NIMBYism<sup>46</sup> by the suburban communities. Over a century of legalized discrimination and institutionalized racism created a system in which racial segregation was the only possible result.

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.<sup>47</sup> 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 reduces 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.<sup>48</sup> A study conducted in 2003 researching the differences in housing equity among blacks, Hispanics, Asians, and non-Hispanic whites in the United States found that black and Hispanic mortgage holders are notably more disadvantaged than white mortgage holders.<sup>49</sup> Both have home loans with higher interest rates than do whites, and they are 1.5 to 2.5 times as likely to pay interest of 9% or more.<sup>50</sup> The researchers also found that black mortgage holders pay \$5,149 more than a white mortgage holder over the 30-year course of a median-valued black home loan of \$53,882.<sup>51</sup> If this excess were invested, it would yield \$11,903 in additional net worth at a 5% rate of return.<sup>52</sup> Similarly, the Hispanic-white gap in mean interest (0.17%) means that a Hispanic mortgage holder pays \$3,441 more than does a white mortgage holder for a 30-year mortgage on a median-valued Hispanic home loan of \$80,000.<sup>53</sup>

Not only do the negative effects of segregation hurt the minority communities in Wisconsin, but the overall state economy also suffers from 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 this segregation in order to create policies that effectively address the problem.

### **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 between 2000 and 2007. The State underwent an increase in the number of large households (households with six or more occupants), as well as an increase in households of just one person.

Implications of household size are not race-neutral. Minority family households in Wisconsin are more likely to include children. Thirty percent of the State of Wisconsin's children are minorities, whereas 16% of the total population is minority.<sup>54</sup> Thus, with more children who are minorities, minority households tend to be larger than white households as detailed below in **Table 4**.

TABLE 4 | TOTAL HOUSEHOLD SIZE BY RACE<sup>55</sup>

State	Average	White	Black	Asian	Hispanic
Illinois	2.63	2.44	2.86	3.00	3.95
Indiana	2.53	2.49	2.62	2.66	3.45
Michigan	2.56	2.50	2.74	2.93	3.29
Minnesota	2.52	2.46	2.82	3.66	3.58
Wisconsin	2.50	2.44	2.84	3.64	3.48

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 2.44 persons in the State of Wisconsin. In contrast, African Americans have an average of about 2.84 persons per household, Hispanics have an average household size of 3.48 persons, and Asians have an average household size of about 3.64 persons. Housing policy that effectively ensures fair housing choice will 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 21.39% of all of Wisconsin's family households in 2007.<sup>56</sup> Many of these families were comprised of people of color. These households are particularly exposed to discriminatory practices in the housing market, including predatory

<sup>56</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

lending, because of their race, gender, marital status and presence of children in the household.

The 2005-2007 American Community Survey reported a decrease in the percentage of households that lived in overcrowded households in Wisconsin. The traditional U.S. Census definition of overcrowded household is a household that has more persons than the number of rooms it occupies excluding bathrooms and hallways. According to the 2005-2007 American Community Survey, 6.3% of non-white householders experienced overcrowding. This is a decrease of 6.2% in the number of non-white overcrowded households since 2000 where 12.5% of non-white households lived in overcrowded conditions. However, there is a growing gap between non-white and white households living in overcrowded conditions with 6.3% of non-white householders experiencing overcrowding compared to .9% of white householders. The highest percentage of overcrowding occurs in minority households, in part because minorities have larger families, but also because their access to larger units is limited by discrimination and lack of affordability. The fact that overcrowding has decreased at a slower pace for non-white households compared to white households is an indicator that many minority families are facing obstacles to fair housing choice.

### Homeownership

The overall owner-occupancy rate in Wisconsin increased slightly during the first seven years of the twenty-first century from 68% to 70%.<sup>57</sup> Homeownership rates increased for all racial and ethnic groups during this time as depicted in **Table 5**.

TABLE 5 | HOMEOWNERSHIP BY RACE FROM 2000-2007<sup>58</sup>

Race / Ethnicity	2000		2005-2007	
	% Owner Occupied	% Renter Occupied	% Owner Occupied	% Renter Occupied
White	71.37%	28.63%	77.74%	22.26%
Black	32.44%	67.56%	36.91%	63.09%
Native American	47.25%	52.75%	59.49%	40.51%
Asian	41.34%	58.66%	54.87%	45.13%
White, Non-Hispanic	71.71%	28.29%	52.68%	47.32%
Hispanic or Latino	37.67%	62.33%	47.32%	52.68%

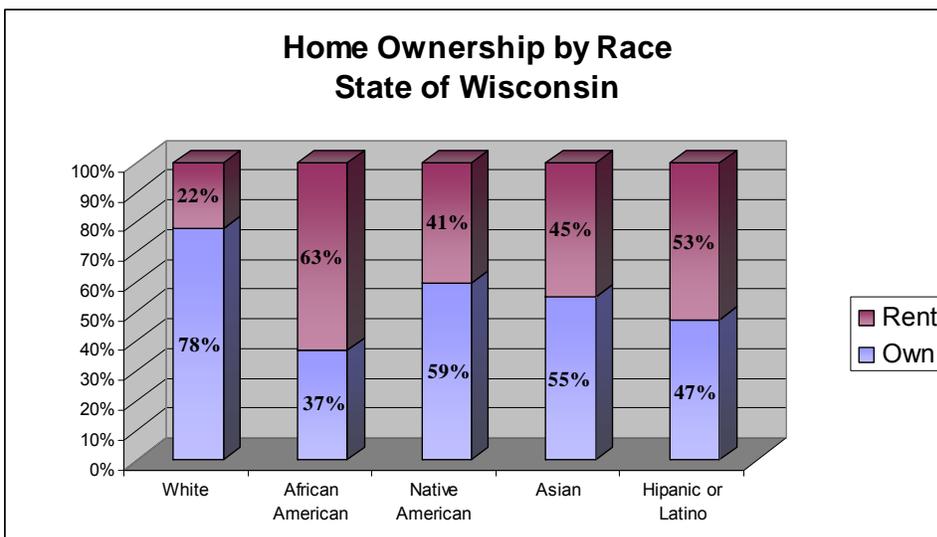
<sup>57</sup> Id.

<sup>58</sup> Both entitlement cities and counties were extracted from this data collected from the U.S. Census Bureau, 2005-2007 American Community Survey when available. The 2000 Census data does not extract entitlement counties and cities.

Specifically:

- About 37% of African American households owned their homes by 2007 compared to 32% in 2000, which is the lowest percent increase when compared to all other racial and ethnic groups.
- Hispanic homeownership increased 9 percentage points from about 38% in 2000 to 47% in 2007.
- Asians experienced the largest percentage point increase in homeownership of 14%; in 2000, only 41% of Asian households were owner-occupied compared to 55% in 2007.
- Whites experienced a percentage point increase of 7% in homeownership rates from 71% to 78% from 2000 to 2007.

When comparing the homeownership rates by race in Wisconsin, it is evident that African Americans have the lowest homeownership rate out of all the minority groups. As shown in Figure 1, the homeownership rate for African Americans is anywhere from 10-41% less than any other minority group. This gap dramatically increases when comparing homeownership rates between whites and African Americans in Wisconsin. According to **Figure 1**, the white homeownership rate is 41% higher than the homeownership rate for African Americans.



**FIGURE 1 |  
HOMEOWNERSHIP BY  
RACE IN WISCONSIN<sup>59</sup>**

<sup>59</sup> Both entitlement cities and counties were extracted from this data collected from the U.S. Census Bureau, 2005-2007 American Community Survey when available.

Although African Americans have the lowest homeownership rate in Wisconsin, other minority groups have low homeownership rates compared to whites. Despite the homeownership gains among Hispanics, African Americans, and Asians, sizeable racial disparities still exist between minority and white populations as shown in **Table 6**.

TABLE 6 | HOMEOWNERSHIP RATE BY MINORITY STATUS IN WISCONSIN<sup>60</sup>

	Minorities (does not include Hispanic or Latino origin)		Non-Minorities (does not include Hispanic or Latino origin)	
	Number	Percent	Number	Percent
<b>Total Households</b>	211,380	-	2,023,866	-
<b>Homeowners</b>	85,287	40.35%	1,486,270	73.44%
<b>Renters</b>	126,093	59.65%	537,596	26.56%

According to Table 6, minorities have a homeownership rate of 40% and whites have a homeownership rate of 73%.

Furthermore, the minority homeownership rates in Wisconsin fall below those in other Upper Midwest states, according to 2005-2007 American Community Survey data collected in **Table 7**.

TABLE 7 | HOMEOWNERSHIP BY RACE IN THE UPPER MIDWEST STATES

	Owner Occupied					Renter Occupied				
	Illinois	Indiana	Michigan	Minnesota	Wisconsin	Illinois	Indiana	Michigan	Minnesota	Wisconsin
<b>White</b>	76.65%	75.63%	79.87%	78.73%	73.44%	23.35%	24.37%	20.13%	21.27%	26.56%
<b>Black</b>	43.15%	43.51%	50.12%	29.17%	34.48%	56.85%	56.49%	49.88%	70.83%	65.52%
<b>Native American</b>	60.45%	64.45%	63.48%	50.77%	51.61%	39.55%	35.55%	36.52%	49.23%	48.39%
<b>Asian</b>	66.25%	56.05%	60.64%	62.48%	52.35%	33.75%	43.95%	39.36%	37.52%	47.65%
<b>Pacific Islander</b>	43.80%	61.01%	51.32%	38.29%	33.33%	56.20%	38.99%	48.68%	61.71%	66.67%
<b>Some Other Race</b>	52.61%	51.82%	56.48%	50.54%	37.59%	47.39%	48.18%	43.52%	49.46%	62.41%
<b>2 or More Races</b>	56.96%	58.02%	62.37%	57.92%	52.85%	43.04%	41.98%	37.63%	42.08%	47.15%
<b>White, Non-Hispanic</b>	77.41%	76.06%	80.21%	79.15%	73.83%	22.59%	23.94%	19.79%	20.85%	26.17%
<b>Hispanic or Latino</b>	57.29%	52.41%	58.51%	50.97%	42.79%	42.71%	47.59%	41.49%	49.03%	57.21%

<sup>60</sup> 2005-2007 American Community Survey 3-Year Estimates – To keep a larger sample size, the entitlement counties and cities were not extracted from this data set.

Wisconsin ranks last in homeownership rates for Asian, Hispanic and Latino, and Native Hawaiian and Other Pacific Islander racial and ethnic groups. As home equity is often the foundation for educational, employment, and business opportunities, these disparities disadvantage minorities in incalculable ways, preventing full participation in the State of Wisconsin's economic life. Impediments to homeownership are, in effect, impediments to fair housing choice. Possible policy solutions to increase minority homeownership rates in Wisconsin will be addressed in the *Recommendations* section.

### **Age Distribution**

The median age for the State of Wisconsin residents is 38 years, which is older than both the United States' median age of 36 and the Upper Midwest median age of 37. Median age by race and ethnicity varies significantly in Wisconsin:

- The median age of African Americans is 27.1 years.
- Hispanics and Latinos have a median age of 25.2 years.
- Asians have a median age of 26.8 years.
- The median age for whites is 39.7 years.

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.

### **Disability**

Thirteen and a half percent of Wisconsin's residents have a disability.<sup>61</sup> Disability is experienced at different levels in different racial groups; Native Americans, in particular, are disproportionately affected by disabilities. Of the Native American population, 24.8% have a disability. 19.7% of the African American population has one or more disabilities, which is relatively higher than all other racial and ethnic groups excluding the Native Americans. 9.2% of Hispanic and Latino people, 11.0% of Asians, and 10.4% for whites have one or more disabilities.

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

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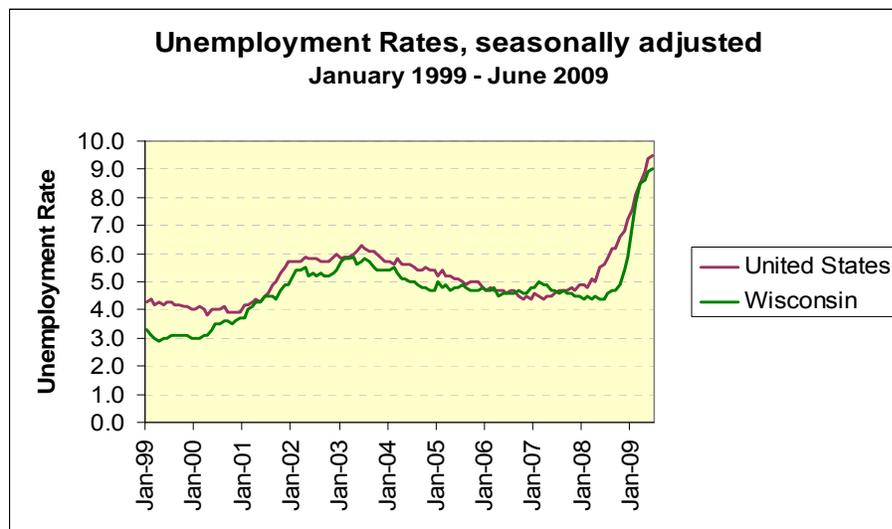
<sup>61</sup> Includes the non-institutionalized population over the age of five from the 2005-2007 American Community Survey

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 disabilities or to permit reasonable modification to a housing unit.”<sup>62</sup> Thus, it is most important to recognize that it will be incumbent on 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. With continued state focus and funding, Wisconsin will ensure that there are services available to people with disabilities to help obtain such housing on an equal opportunity basis.<sup>63</sup>

## Income and Employment

The overall state unemployment rate has had its variable peaks and troughs between January 1999 and June 2009. However, starting in January 2009, unemployment rates increased dramatically; between December 1, 2008 and January 1, 2009, Wisconsin’s unemployment rate went from 5.9% to 7.0%. In June 2009, it is reported to be at 9.0%. Of all the metropolitan statistical areas, Janesville had the highest unemployment rate of 13.2% in June 2009. However, although the unemployment rate is steadily increasing in Wisconsin, it is still lower than the national unemployment rate of 9.5% in June 2009, according to **Figure 2**. Since the beginning of 2009, Wisconsin’s unemployment rate has been at or below the national unemployment rate signifying that the state’s unemployment rate is not the highest nor the lowest when compared to other states.

FIGURE 2 | UNEMPLOYMENT RATES FOR THE UNITED STATES AND WISCONSIN FROM JANUARY 1999 TO JUNE 2009<sup>64</sup>



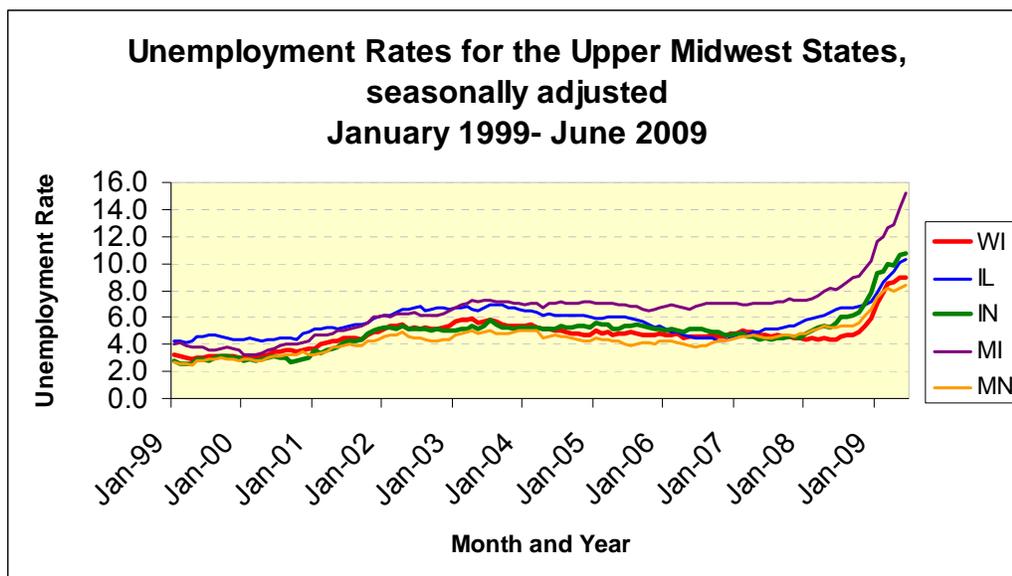
<sup>62</sup> Turner, Herbig, Kaye, Fenderson, and Levy. “Discrimination Against People with Disabilities: Barriers at Every Step.” 2005

<sup>63</sup> Affordable housing is housing for which the occupant pays no more than 30% of his income.

<sup>64</sup> U.S. Department of Labor. Bureau of Labor Statistics. Labor Force Statistics. Current Population Survey and Local Area Unemployment Statistics.

When comparing unemployment rates to the other Upper Midwest states, Wisconsin has the second lowest rate with only Minnesota's unemployment rate of 8.4% being lower. Michigan has the highest unemployment rate in June 2009 of 15.2%, which is also significantly above the national unemployment rate. Illinois and Indiana have similar unemployment rates of 10.3% and 10.7% respectively, according to **Figure 3**.

FIGURE 3 | UNEMPLOYMENT RATES FOR THE UPPER MIDWEST FROM JANUARY 1999 – MAY 2009<sup>65</sup>



The State of Wisconsin's Department of Workforce Development reports that from May 2009 to May 2009, there was a decline of 133,800 Wisconsin non-farm jobs.<sup>66</sup> Goods Producers were down 78,400, mostly in Manufacturing, which was down 61,500. Service sector jobs declined by 55,400 over the year, led by Professional & Business Services, which lost 21,900 jobs.

The May survey of Wisconsin households conducted by Wisconsin's Department of Workforce Development showed 4,700 more employed than in April, and 121,700 fewer employed than one year ago. Wisconsin's civilian labor force was up 1,200 to 3,086,800 in May 2009, an increase of 19,500 over May 2008.<sup>67</sup>

With the labor force growing and the number of available jobs stagnating in Wisconsin, it is harder for every racial and ethnic group to find a job let alone a well-paying job. Despite the growing unemployment rates, on average, African Americans, Hispanics and Native Hawaiian and Other Pacific Islanders earn significantly less per year than whites earn as portrayed in **Figure 4**. Also, males earn on average \$8,958 more in 12 months than

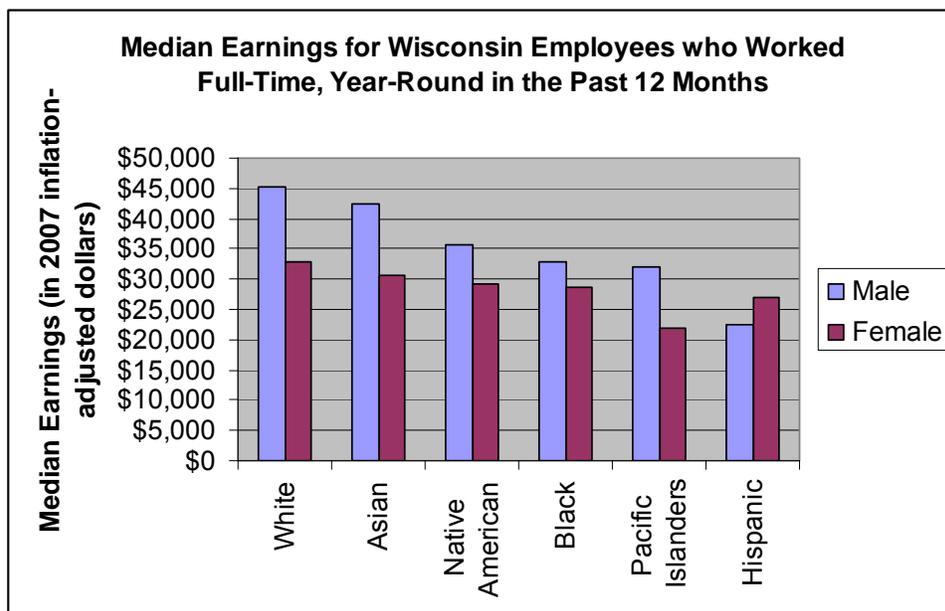
<sup>65</sup> U.S. Department of Labor. Bureau of Labor Statistics. Local Area Unemployment Statistics.

<sup>66</sup> Wisconsin Department of Workforce Development. "May Unemployment Rates Announced."

<sup>67</sup> Id.

females in every racial and ethnic group except for within the Hispanic population. In the Hispanic population, women earn approximately \$4,600 more than a year than men earn in 12 months.

**FIGURE 4 | MEDIAN EARNINGS FOR WISCONSIN EMPLOYEES WHO WORKED FULL-TIME, YEAR-ROUND IN THE PAST 12 MONTHS<sup>68</sup>**



In addition, people with disabilities are more likely than people without disabilities to have incomes below the poverty line and to be unemployed.<sup>69</sup> Fewer than half (45.6 percent) of people in the United States with a disability between the ages of 21 and 64 were employed at the end of 2005.<sup>70</sup> People with a non-severe disability were less likely to be employed than people with no disability, 75.2 percent and 83.5 percent, respectively.<sup>71</sup> Wisconsin's numbers are likely the same as the national figures. From the 2005-2007 American Community Survey, the median earnings in the past 12 months for a person with a disability is \$17,112, which is significantly lower than the median earning for a person without a disability.<sup>72</sup>

Given the relatively higher unemployment rates and lower incomes of people with disabilities, African Americans, Hispanics, Native Americans, and Native Hawaiians and Other Pacific Islanders, the need for affordable housing for these populations is urgent. If

<sup>68</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

<sup>69</sup> Matthew W. Brault, "Current Population Reports," Americans with Disabilities: 2005 Household Economic Studies.

<sup>70</sup> Id., pg. 8

<sup>71</sup> Id., pg. 8

<sup>72</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

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.

## Transportation

Because of urban sprawl and increasing job creation in the suburbs in the United States,<sup>73</sup> black families, who mostly reside in the central part of cities, are more and more isolated from jobs that potentially match their skills<sup>74, 75</sup>. Given this sprawling, access to good transportation enables residents to conduct geographically broader job-search, accept offers further away from home, improve work attendance, and keep the commute burden to a reasonable level.<sup>76</sup> In other words, in the highly auto-oriented US metropolitan areas, the number of accessible job opportunities is considerably lower for public transit users than for car users<sup>77, 78</sup>. This has a major effect on some racial and ethnic groups ability to find employment if they do not own a car. In Wisconsin, as depicted in **Table 8**<sup>79</sup> below, approximately 7% of minorities use public transportation as their primary mode of transportation to work as opposed to 1% of whites.

TABLE 8 | MEANS OF TRANSPORTATION TO WORK<sup>80</sup>

	White, Non-Minority		Minority	
	Number	Percent	Number	Percent
<b>Total:</b>	2,531,808	-	279,509	-
<b>Car, truck, or van - drove alone</b>	2,053,332	81.10%	194,974	69.76%
<b>Car, truck, or van – carpooled</b>	220,369	8.70%	41,974	15.02%
<b>Public transportation (excluding taxicab)</b>	29,153	1.15%	19,812	7.09%
<b>Walked</b>	84,157	3.32%	11,512	4.12%
<b>Taxicab, motorcycle, bicycle, or other means</b>	40,877	1.61%	4,723	1.69%
<b>Worked at home</b>	103,920	4.10%	6,514	2.33%

Although for every race and ethnicity group their primary mode of transportation to work is a car, truck, or van driven alone, a significant portion of the Black and African American population, 12.34%, has limited access to the burgeoning job market, particularly in outlying

<sup>73</sup> Brueckner, 2000, 2001; Glaeser and Kahn, 2001; Glaeser and Shapiro, 2003; Glaeser and Kahn, 2004; Nechyba and Walsh, 2004

<sup>74</sup> Wassmer, 2008

<sup>75</sup> Pieter A. Gautier and Yves Zenou, "Car Ownership and the Labor Market of Ethnic Minorities."

<sup>76</sup> Id.

<sup>77</sup> Hess, 2005; Shen, 1998

<sup>78</sup> Id.

<sup>79</sup> Workers include those over 16 years of age and members of the Armed Forces and civilians who were at work last week.

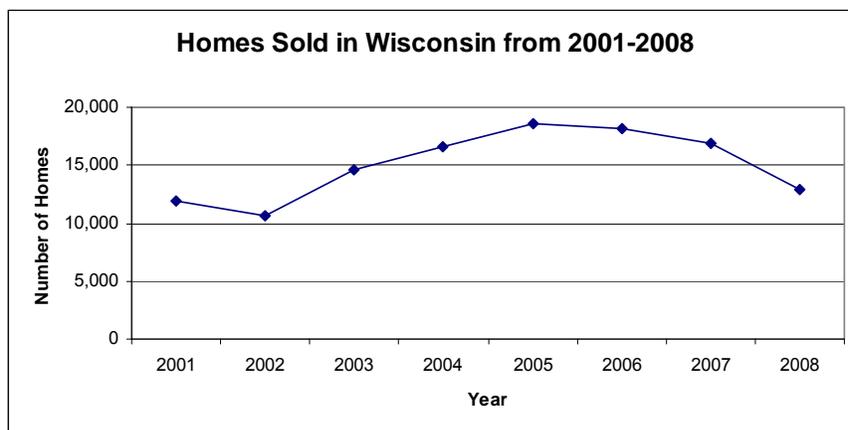
<sup>80</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

communities that have inadequate public transportation services. When combined with minorities' lack of access to suburban housing opportunities, this impediment has a serious effect on minorities' ability to become full participants in Wisconsin's economy.

Connecting the available labor force with available jobs would require either appropriately priced housing in high job growth communities affordable to persons in those jobs, or some form of transportation connecting Wisconsin's labor force to jobs. Currently the various state mass transit systems have varying results in being able to connect people with jobs. In rural areas where mass transit is scarcely available, many people struggle to find jobs outside of their local community due to the burden of high trip costs.

### Housing Supply Characteristics

From 2005-2008, the number of Wisconsin's home sales decreased each year, according to **Figure 5**. From 2001 to 2005, Wisconsin sold a net total of 1,000 housing units.



**FIGURE 5 | NUMBER OF HOMES SOLD IN WISCONSIN FROM 2001-2008**<sup>81</sup>

Reflecting national trends in the housing market of decline in value, housing values in the Wisconsin are also decreasing since the housing bubble burst in 2005. In 2005, the median value for a single-family owner-occupied unit in Wisconsin was \$125,605, compared to \$118,198 in 2008.

Housing in the State is also older than the median age in other Upper Midwest states or the country as a whole. Approximately 27.9% of Wisconsin's housing was constructed before 1949; 19.5% was built between 1950 and 1969; and 52.7% was built after 1970, according to **Table 9**. The median year that all structures were built in Wisconsin's is 1969, which is older than the United States' median year that housing structures were built of 1974. 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,

<sup>81</sup> "Housing Statistics for Wisconsin." Wisconsin Realtors Association.

but especially in regard to the presence of lead paint. The deleterious effects of lead poisoning, especially in children, are well documented. As Wisconsin's children are disproportionately minorities, this issue has a disparate impact on people of color.

TABLE 9 | HOUSING UNITS BY YEAR STRUCTURE BUILT

Year Built	Number	Percent
Built 2005 or later	25,929	1.47%
Built 2000 to 2004	159,517	9.05%
Built 1990 to 1999	270,085	15.33%
Built 1980 to 1989	187,026	10.62%
Built 1970 to 1979	284,940	16.17%
Built 1960 to 1969	167,786	9.52%
Built 1950 to 1959	175,204	9.95%
Built 1940 to 1949	107,042	6.08%
Built 1939 or earlier	384,117	21.80%
<b>Total:</b>	<b>1,761,646</b>	<b>100.00%</b>

TABLE 10 | HOUSING UNIT SIZE

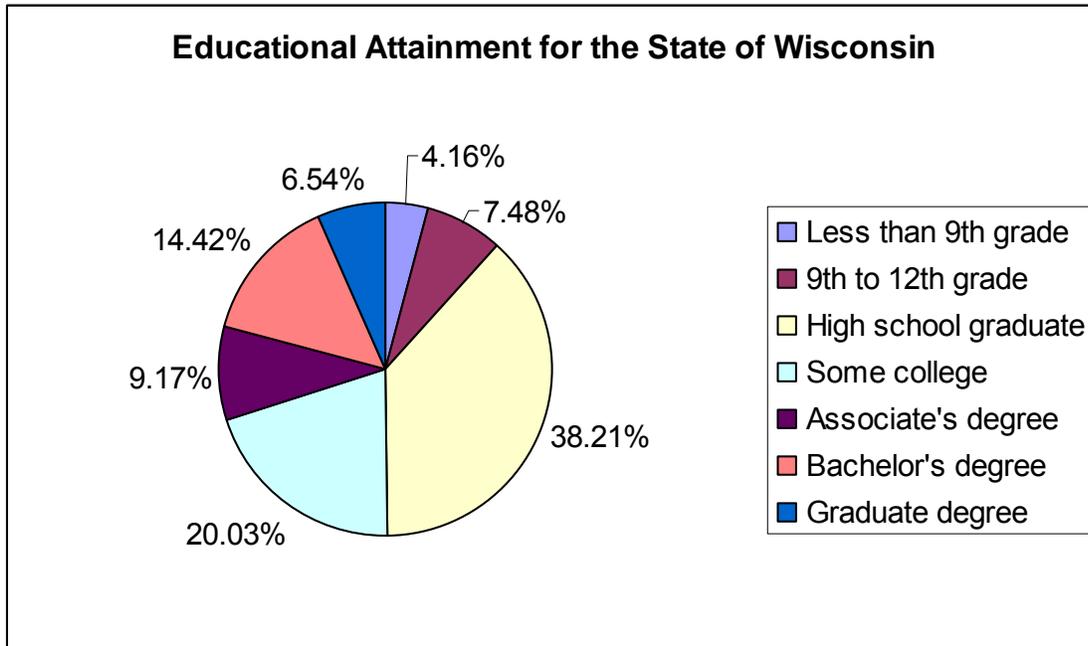
Bedrooms	Number	Percent
<b>None</b>	7,801	0.62%
<b>1</b>	91,622	7.24%
<b>2</b>	345,462	27.31%
<b>3</b>	573,372	45.33%
<b>4</b>	199,718	15.79%
<b>5 or more</b>	47,013	3.72%
<b>Total Occupied Units</b>	<b>1,264,988</b>	<b>100.00%</b>

According to **Table 10**, Wisconsin's housing is primarily composed of two- and three-bedroom units, which together make up 72.6% 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.

### Education

In 2007, 58.24% of Wisconsin's residents are high school graduates or completed some college, according to **Figure 6**. 20.96% of Wisconsin's residents have a bachelor or graduate degree.

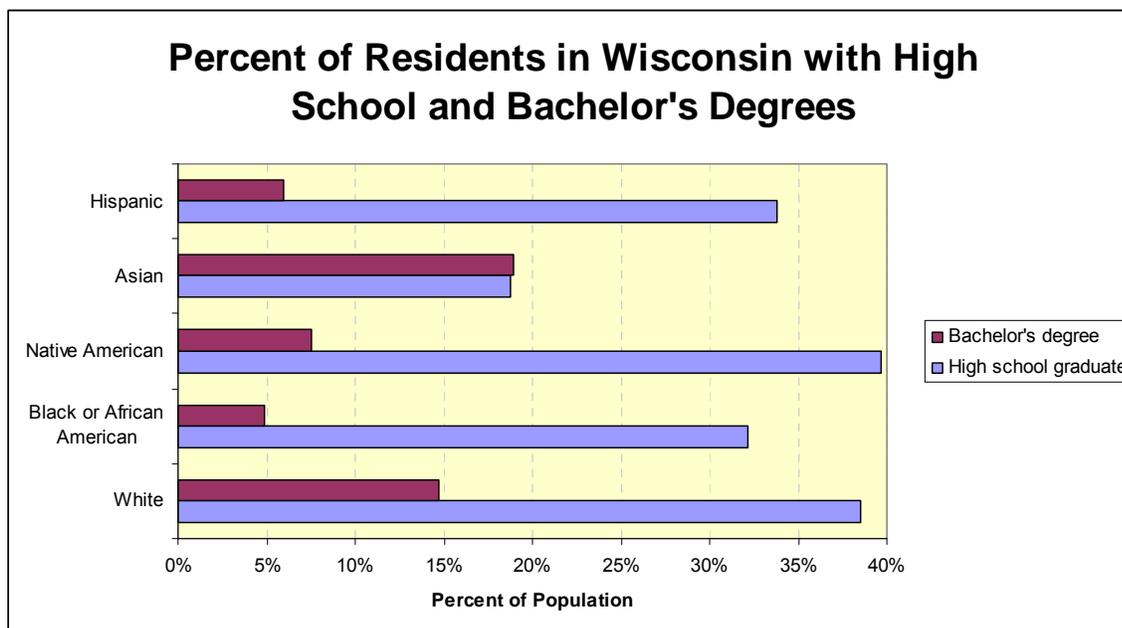
FIGURE 6 | EDUCATIONAL ATTAINMENT FOR THE STATE OF WISCONSIN<sup>82</sup>



<sup>82</sup> U.S. Census Bureau. 2005-2007 American Community Survey. This data extracts entitlement cities and counties where city and county data was available for each race. Some entitlement city and county data was unavailable.

When analyzed by race and ethnicity, educational attainment is relatively equal at the high school level according to **Figure 7**.

**FIGURE 7 | PERCENT OF PEOPLE 25 AND OVER WHO ARE HIGH SCHOOL AND / OR COLLEGE GRADUATES**<sup>83</sup>



For instance, 38.53% of whites are high school graduates, 32.15% of African Americans, 33.78% of Hispanics and have a high school diploma. The Asian population is the only racial group that has a lower percentage of the population who have a high school diploma, which is 18.73%. However, when comparing the residents who received a bachelor's degree, there is a larger gap among the various races and ethnic groups. 14.71% of whites and 18.90% of Asians have a bachelor's degree whereas 4.86% of black or African American, 5.94% of Hispanic people, and 7.51% of Native Americans have a bachelor's degree. Especially for black or African American residents in Wisconsin, the racial gap between those with college degrees exists.

The Asian population serves as an interesting case study in terms of educational attainment 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.<sup>84</sup> 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.<sup>85</sup> Regarding educational attainment, Asian Indians have the

<sup>83</sup> Id.

<sup>84</sup> Stacey J. Lee. "The Truth and Myth of the Model Minority: The Case of Hmong Americans." 2007.

<sup>85</sup> Le, C.N. "Socioeconomic Statistics and Demographics." July 2009.

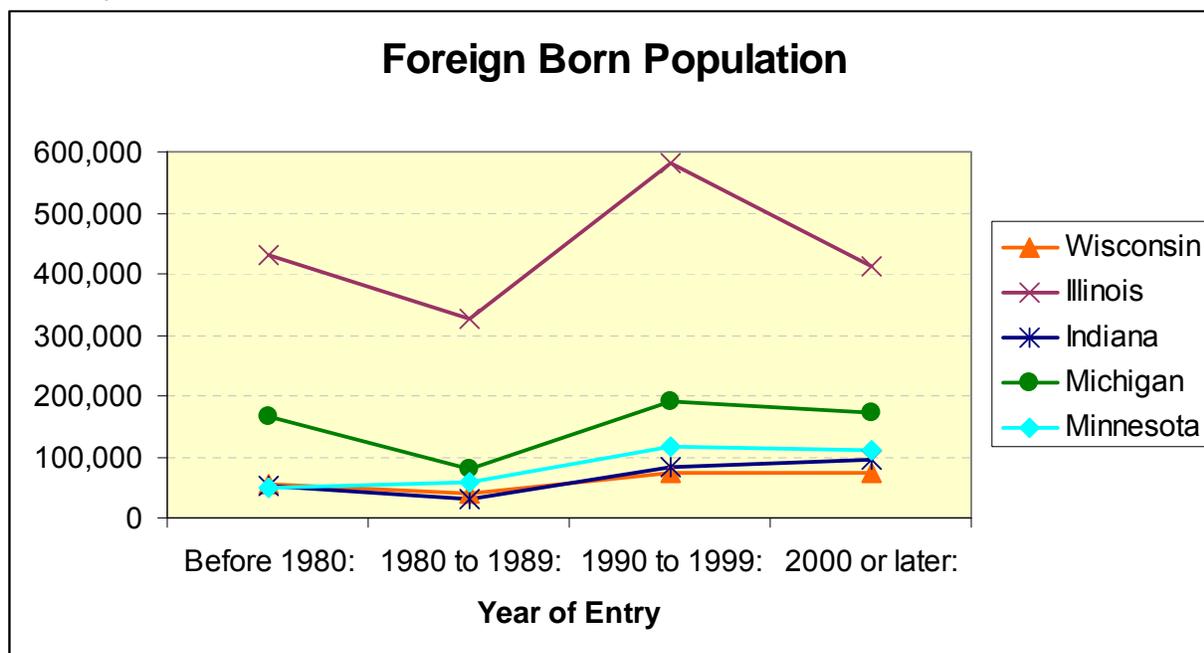
highest rates - - an astounding 64.4% have college degrees while 12.5% have an advanced degree.<sup>86</sup>

### 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.

As shown in **Figure 8**, the foreign-born population in Wisconsin has increased 34% over the last twenty years.

FIGURE 8 | FOREIGN BORN POPULATION IN THE UPPER MIDWEST STATES<sup>87</sup>



In Wisconsin non-entitlement communities, which exclude Milwaukee, Dane, and Waukesha Counties and other larger cities, .77% of households are linguistically isolated.<sup>88</sup> While the concentration of linguistically isolated households is not significant yet in many places in Wisconsin, it is likely to become an issue with ongoing and increasing influx of foreign-born persons. Of the foreign-born population over five years old in Wisconsin, approximately 23% cannot speak English well.<sup>89</sup> A population that is both minority and does not speak English well may face discrimination based on national origin as well as

<sup>86</sup> Id.

<sup>87</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

other challenges related to obtaining housing, like communicating effectively with a rental agent, real estate agent, mortgage lender or insurance agent.

### **Victims of Sexual Assault and Domestic Violence**

**Sexual Assault.** In 2004, 5,663 sexual assault cases were reported to Wisconsin law enforcement agencies.<sup>90</sup> 78% of all sexual assault victims reporting were juveniles.<sup>91</sup> Twenty-five percent of those victims were under 13 years of age.<sup>92</sup> There is a general consensus among experts that the number of Sexual Assault (SA) cases is highly under-reported in the state of Wisconsin.<sup>93</sup> Using the Center for Disease Control's estimate that one in seven women in Wisconsin is sexually assaulted in her lifetime, OJA projects that about 17,000 females experience sexual assault each year.<sup>94</sup> This number corresponds with the estimate that about 1/3 of actual cases are reported to law enforcement.

**Domestic Violence.** In 2005, DOJ reported 26,323 domestic violence cases filed by Wisconsin District Attorneys.<sup>95</sup> Of these, at least 12,000 came from Madison and Milwaukee.<sup>96</sup> According to DHFS data, in 2005, 36,113 people sought services from DHFS funded domestic abuse programs.<sup>97</sup> The 2004 WCADV Domestic Violence Homicide Report includes 33 total deaths, 32 adults, and 1 child.<sup>98</sup>

## **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.<sup>99</sup> The National Fair Housing Alliance estimates that 4 million incidents of housing discrimination occur annually in the 2009 Fair Housing Trends Report; however, the National Fair Housing Alliance reported that HUD and state agencies process only slightly more than 10,000 complaints annually.<sup>100</sup> Private fair housing groups with average staff size of five while few in number and largely underfunded, year after year continue to

<sup>90</sup> 2006-08 Violence Against Women Act STOP Formula Grant Statewide Three-Year Implementation Plan, Wisconsin Office of Justice Assistance, June 2007, pg. 8.

<sup>91</sup> *Ibid.*, pg. 8

<sup>92</sup> *Ibid.*, pg. 8

<sup>93</sup> *Ibid.*, pg. 8

<sup>94</sup> *Ibid.*, pg. 8

<sup>95</sup> *Ibid.*, pg. 10

<sup>96</sup> *Ibid.*, pg. 10

<sup>97</sup> *Ibid.*, pg. 10

<sup>98</sup> *Ibid.*, pg. 10

<sup>99</sup> "Fair Housing Enforcement: Time for a Change." National Fair Housing Alliance, May 1, 2009. pg. 13.

<sup>100</sup> *Id.*, pg. 7

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.<sup>101</sup>

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.<sup>102</sup> 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.

In 2000, 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 African Americans, Hispanics, Asian and Pacific Islanders, and Native Americans. Although none of the sample metropolitan areas were in Wisconsin, similar patterns of discrimination may exist in Wisconsin. The results of the study are summarized in the **Table 11** below.

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<sup>101</sup> Id., pg. 14

<sup>102</sup> 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.

TABLE 11 | PERCENT OF CONSISTENT ADVERSE TREATMENT<sup>103</sup>

Percent of Consistent Adverse Treatment		
	Renter	Homebuyer
<b>African American</b>	21.6	17
<b>Hispanic</b>	25.7	19.7
<b>Asian and Pacific Islander</b>	21.5	20.4
<b>Native American</b>	28.5	16.9

\* Data for Native American renters was collected in 3 states and for homebuyers in one state

The final phase of the study 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 testing 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 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

<sup>103</sup> Discrimination in Metropolitan Housing Markets: Phase 1-3

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 the state of Wisconsin that primarily serves Milwaukee, Washington, Waukesha, Ozaukee, Racine, Dane, Outagamie, Brown, Winnebago and Calumet Counties, 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 12**.

TABLE 12 | HOUSING DISCRIMINATION COMPLAINTS REFERRED TO OTHER AGENCIES OUTSIDE OF MMFHC<sup>104</sup>

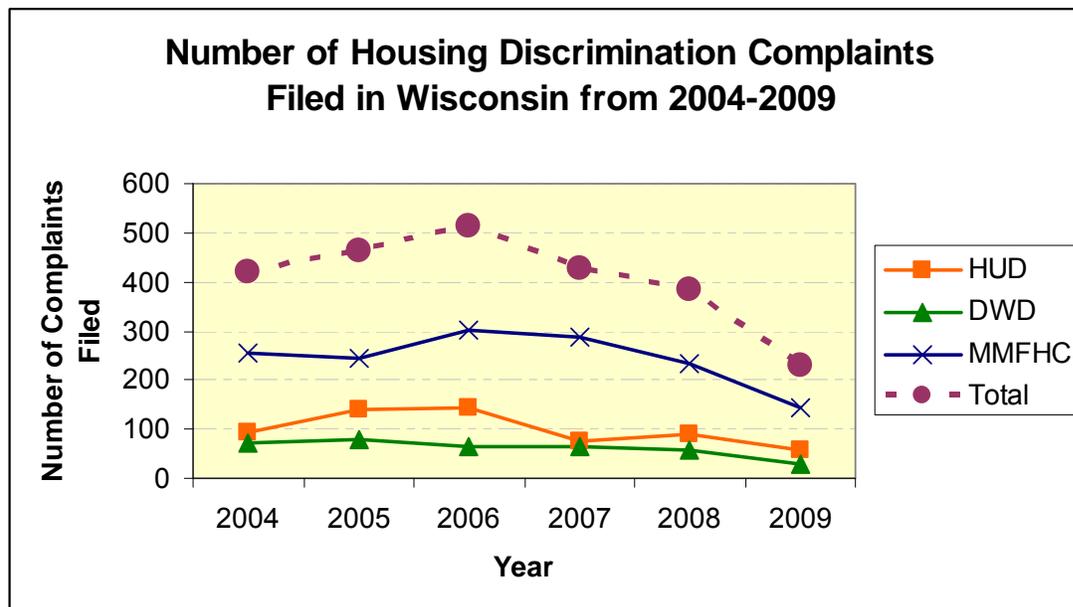
Complaints Referred to Other Agencies Outside of MMFHC in 2008	
Referral Agency:	Number of Complaints Referred:
US Department of Housing and Urban Development	8
Wisconsin Equal Rights Division	4
Dane County Corporation Counsel	3

From 2004 to 2009 HUD's Fair Housing Enforcement Center, Wisconsin's Equal Rights Division and MMFHC received a combination of 2,436 housing complaints. In 2008, the three fair housing organizations received a total of 384 housing complaints, which is less than the number of complaints the three organizations fielded in 2007, or 428. In general,

<sup>104</sup> 2008 Annual Report, Metropolitan Milwaukee Fair Housing Council.

the number of complaints for all three organizations has gone down in the past five years. **Figure 11** below shows the number of complaints each agency received annually compared to the total number of complaints received for all three agencies.

FIGURE 11 | NUMBER OF HOUSING DISCRIMINATION COMPLAINTS IN WISCONSIN FROM 2004-2009



The reasons that complaints were filed are found in the following table. Frequently, complainants file on several bases. Thus, for some agencies reported, the total number of bases for complaints is greater than the total number of 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 COMMERCE

DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT

The Division of Housing and Community Development (DHCD) administers federal housing, homelessness, public facility, and economic development programs: Community Development Block Grant (CDBG) Small Cities, Home Investment Partnerships (HOME), Homelessness Prevention & Rapid Re-housing Program (HPRP), Neighborhood Stabilization Program (NSP), Emergency Shelter/Transitional Housing/Homeless Prevention (ESG/THP/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) Manufactured Housing Rehabilitation & Recycling (MHRR), and the Wisconsin Fresh Start Program. The Division also administers Projects for Assistance in the Transition from Homelessness (PATH), which provides services for adults who have a serious mental illness and are homeless.

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

DHCD 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. DHCD 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.

The Department of Commerce Division of Housing and Community Development (DHCD) is actively addressing foreclosure and eviction issues through the state of Wisconsin in several ways:

- DHCD staff responds to hundreds of inquiries from people facing mortgage foreclosure or rental eviction situations. We do so by making referrals to our grantees or other resources.
- DHCD sponsors a website that identifies affordable housing units at [www.wifrontdoorhousing.org](http://www.wifrontdoorhousing.org) and another one, which identifies service providers at [www.frontdoor.org](http://www.frontdoor.org).
- For years, DHCD requires that local homebuyer programs that the Division supports include prudent underwriting standards and specified education curriculum for new homebuyers. This continues to result in relatively low incidences of foreclosure among state homebuyer program beneficiaries.
- DHCD supports local efforts through the use of state funded programs under the Housing Cost Grants and Loans appropriation:
  - **Housing Cost Reduction Initiative (HCRI).** In 2007, the HCRI program began providing foreclosure prevention assistance through several grantees with trained foreclosure counseling staff. In October 2008, approximately \$560,000 was awarded to 14 housing agencies to provide foreclosure assistance to low- and moderate-income homeowners over the next two years.
  - **Homelessness Prevention Program.** This program provides funding to agencies that work with individuals and families who are homeless or at risk of becoming homeless. Funding was provided to 11 nonprofit agencies to provide mortgage foreclosure prevention assistance. In 2008, there were 215 households that received over \$121,261 in mortgage payment assistance. This grant program also provides funding for emergency rental assistance, monthly rental subsidies for up to one year, or security deposit assistance. In 2008, 5,885 individuals benefited. Over \$900,489 was utilized for this rent payment assistance.
  - **Federal Emergency Shelter Grant Funds (ESG).** In 2008, 46 individuals benefited from foreclosure prevention funds.

#### 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 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 2005. In June 2008, the number of individuals with developmental and physical disabilities and frail elderly persons relocated from institutions to community settings through the ICF-MR Restructuring Initiative totaled 616.<sup>105</sup> Also in June 2008, the number of elderly and physically disabled individuals relocated from nursing homes under the Community Relocations Initiative has served 1,945 clients.<sup>106</sup> 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 REGULATION & LICENSING

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

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<sup>105</sup> "Clients Served by DHS Programs." Department of Health Services.

<sup>106</sup> Id.

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 two major federal affordable housing programs: the Low-Income Housing Tax Credit (LIHTC) program 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.

In Wisconsin, WHEDA serves as the main resource for direct borrower foreclosure assistance. Its website hosts a slew of resources including a foreclosure prevention hotline that connects callers to a credit counselor to establish a budget, understand the terms of the borrower’s loan, and talk with the borrower’s financial institution. The website contains a list of trusted lenders in the state, multifamily rental management companies who are willing to work with those seeking a new home, real estate agents, and who to contact for legal advice. WHEDA also has funds to assist homebuyers with existing WHEDA loans in risk of default or foreclosure.

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 two veteran homes in Wisconsin located in Union Grove 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.<sup>107</sup> 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. Homeowners and renters 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.

#### DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Although the Department of Children and Family Services 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

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<sup>107</sup> "Wisconsin's Veterans Home at King." Wisconsin Department of Veterans Affairs.

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. There are 48 W-2 agencies in Wisconsin, consisting 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](http://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.

**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.

**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.

## **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.*

The State makes no effort to define these 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).

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 shall not...be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation or national origin.”) 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 shall not be denied them in any manner for any purpose nor be discriminated against because of sex, race, color, creed, sexual orientation 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 6), 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) be 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.*

An interesting bend 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. The concept of "fair share" (i.e., municipalities must have a minimum percentage of affordable housing units) that has been established in some other states is not the rule in Wisconsin. 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 Housing and Community Development 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. DHCD 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. The efforts of local governments to meet the new requirements are anticipated to lead to better coordination of housing, economic growth, land-use and transportation to name a few. Comprehensive Planning requires all aspects of planning, including housing and economic development, be analyzed in accordance with other local level planning. Matching grants to develop comprehensive plans under Comprehensive Planning are awarded annually from the Division of Intergovernmental Relations.

Wisconsin's planning law requires that a local Comprehensive Plan include a housing element. The comprehensive planning process necessitates that local governments analyze the impact of the policies and regulations of the local government on the development of various types of housing. According to Wisconsin State Statute 66.1001(2)(b), the requirements for a housing element are:

**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 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 includes 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 must 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 defines a "traditional neighborhood development" as: a compact, mixed-use neighborhood where residential, commercial and civic buildings are within close proximity to each other. Additionally, after January 1, 2010, platting, zoning, and mapping must be consistent with the local unit's comprehensive plan. Therefore, the Comprehensive Planning law will have an impact on reducing the barriers to affordable housing. These models 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.

In June 2009, changes were made to the existing TIF laws<sup>108</sup> to extend the life of a TID for one year for affordable housing purposes. 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. 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. This change to the TIF laws may encourage greater development of affordable housing or at least encourage improvement to the existing housing stock by creating new funding sources for housing through tax incremental financing. The new affordable housing provision takes effect on October 1, 2009, and thus the impact of the new legislation on fair housing is unknown.

#### 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."<sup>109</sup> 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 protect landlords from litigation", but "the task force... was unable to agree on any specific square footage limitation."<sup>110</sup>

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<sup>108</sup> 2009 Act 28, §1489i

<sup>109</sup> 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*.

<sup>110</sup> 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*.

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 [Comm 20-25 (one and two family)] nor the Wisconsin Commercial Building Code [Comm 61-65 (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 Commerce. 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, the Department of Commerce considers energy conservation in setting specific standards. In some instances, such as lighting standards for commercial buildings, the statutes direct Commerce to consider energy efficiency in designing standards.

In Section 22.02(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 demonstrate compliance with thermal performance requirements...” In Section 63.001 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 Commerce. While the Federal Fair Housing Act is not specific, “dwellings” is broad enough to encompass mobile homes. The State statutes give the Department of Commerce 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) 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 in Wisconsin. Municipalities (cities, villages, and towns) 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).
- Zoning regulations present the potential for conflict with protections accorded on the basis of sexual orientation under state law. If an area is zoned for single family housing, a same-sex couple, not being legally defined as a family, could be excluded.

#### IMPACT FEES

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 their effect on the “availability of affordable housing.” Furthermore, communities may, under certain circumstances, exempt low-cost housing development from its impact fees.

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 as of yet 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. So

many expensive projects are being proposed, and so little buildable land is left, that municipalities are not concerned with affordable housing development.

The controversy over impact fees continues. 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.<sup>111</sup> 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 unrelated adults reside in which care, treatment or services above the level of room and board but not including nursing care are provided to persons residing in the facility as a primary function of the facility.”
- Nursing homes: “A place which provides 24-hour services including board and room to 3 or more unrelated residents who because of their mental or physical condition require nursing care or personal care in excess of 7 hours a week.”
- Residential Care Apartment Complex or RCAC: “[A] place where 5 or more adults reside that consists of independent apartments, each of which 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 HFS 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.

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<sup>111</sup> “Survey of Local Growth Issues.” Government Accountability Office. RCED-00-272. September 2000.

- **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 and Family Services 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 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 and social 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 and Family Services 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 first class city, 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.<sup>112</sup>

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<sup>112</sup> "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

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 101.22. 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 explicated through the Department of Agriculture, Trade and Consumer Protection's administrative code ATCP 134. In addition, administrative code ATCP 125 regulates tenant/landlord relationship for mobile home parks. A review of these chapters and administrative code, while revealing no explicit mention of State and Federal fair housing laws, uncovered no conflicts with them.

#### 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.

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community-based residential facilities for disabled people (described earlier), a similar covenant would be voided.

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.” 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 sexual orientation). 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” [emphasis added].

Administrative code DFI-BKG 80.85 defines discrimination on the basis of sex or marital status as unconscionable conduct, but the administrative code for commercial banking does not mention other protected classes under Wisconsin’s Open Housing Law. DFI has proposed an amendment to DFI-BKG 80.85 that would prohibit discrimination for the following bases: age, race, creed, religion, color, disability, marital status, sex, national origin, ancestry, sexual orientation, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or the State of Wisconsin, income source from public assistance program, and people who have exercised their right under the Consumer Credit Protection Act. This administrative code amendment has been sent to the legislature.

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 Regulation and Licensing’s administrative codes.

Section 452.14 permits the State's Department of Regulation and Licensing 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 broker, salesperson or time-share salesperson 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 or lawful source of income.*

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)** *A broker or salesperson may not 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 RL 24.03:

**RL 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 1991 Wis. Act 295.)*

Finally, under Administrative Code RL 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), 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 one state class (ancestry) 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 should 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 and farmland administered by the Wisconsin Housing and Economic Development Authority (WHEDA).

A property tax deferral program for elderly homeowners with “lower incomes” (less than \$20,000 per year currently) offers a maximum annual loan of \$2,500. 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. Preliminary figures from 2008 indicate 78 individuals received a total of \$159,000 in loans averaging \$2,039.<sup>113</sup>

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 \$1,160 can be taken as a credit. In 2008, it was available to households with income levels below \$24,500.

Wisconsin maintains a farmland preservation program, an initiative to preserve farmland and promote local land use planning through tax policy. The owner of a contiguous piece of farmland of 35 acres or more may apply through the county clerk. If the local governing body approves, the state and the landowner sign an agreement of ten to twenty-five years in duration. Such an agreement makes the owner eligible for farmland preservation tax credits. Program participants receive up to \$4,200 credit for paid property taxes. In 2006, about 19,100 farmland owners received farmland preservation tax credits totaling \$12.5 million. The average credit was \$652 per claimant. The farmland preservation credits and the payments offset about 20% of the total property taxes paid by farmers who claimed the credit.<sup>114</sup>

The farmland preservation law impacts housing in two ways:

- A landowner can request that farmland be withdrawn from the preservation program for a number of reasons, one being “to develop the land to assist local economic development” (§91.19(2)(b)4.). However, residential development is excluded from the definition of economic development. The owner of the farmland could choose to proceed with residential development but is subject to a lien against the property that is equivalent to the tax credits received in the previous ten years. Thus, the law imposes a stiff disincentive to develop housing on agricultural land.

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<sup>113</sup> State of Wisconsin Legislative Fiscal Bureau. *Property Tax Deferral Loan Program*. Informational Paper 26. January 2009.

<sup>114</sup> “Farmland Preservation Program Summary Sheet 2007.” Farmland Preservation Program, Department of Agriculture, Trade and Consumer Protection.

- Actions to preserve farmland could conflict with residential development plans if the agricultural land lies within the extraterritorial zone of an incorporated municipality.

The supplement to the federal historic rehabilitation credit (§71.07(9m)) provides a 5% supplement to the 20% federal historic rehabilitation credit for rehabilitating certified historic structures used for business purposes and 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, often applied to mixed-use buildings that are generally dilapidated, 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.

**“[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.”<sup>115</sup>**

**“[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.”<sup>116</sup>**

One point of disagreement between HUD and other U.S. agencies in defining predatory lending is the inclusion of property flipping,<sup>117</sup> a practice “whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by

<sup>115</sup> National Community Reinvestment Coalition, *Anti-Predatory Lending Toolkit*, March 2002, p. 4.

<sup>116</sup> 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.

<sup>117</sup> Government Accountability Office. “Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending.” GAO-04-280. January 2004.

a lender's collusion with the appraiser."<sup>118</sup> HUD includes property flipping as a predatory lending practice. As a result of the incidence of property flipping, HUD has issued

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

requirements for receiving Federal Housing Administration insurance that are based on the number of days between resale. Regardless of whether or not property flipping is considered a predatory lending issue, it is enabled through predatory appraisals (see page 37).

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 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.<sup>119</sup> Nonetheless, subprime loans are a valid lending product, and are not synonymous with predatory loans.

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 should help to further fair housing.

#### RESPONSIBLE HIGH COST MORTGAGE LENDING

The federal government has one law that specifically targets high-cost mortgage lending, the Home Ownership and Equity Protection Act of 1994 (HOEPA), which 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). The Federal Trade Commission is the lead federal agency prosecuting violators of HOEPA. The Fair Housing Act and Equal Credit

<sup>118</sup> U.S. Department of Housing and Urban Development. "Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs." 24 CFR Part 203. [Doc. No. FR-4615-F-02].

<sup>119</sup> National Community Reinvestment Coalition. *Anti-Predatory Lending Toolkit*. March 2002. p. 8.

Opportunity Act have been used against predatory lenders in cases where certain segments of the population were targeted.<sup>120</sup>

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.

HOEPA applies to loans secured against a consumer’s principal dwelling in which the annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities of comparable term length. HOEPA also applies to loans with fees that exceed the larger of eight percent of the total loan amount or \$510 in 2005 (this amount is adjusted annually). Both the Homeowner’s Protection Act and HOEPA exclude open-ended loans and reverse mortgages. In addition to these exclusions, both HOEPA and Wisconsin Chapter 428 exclude residential mortgage transactions (loans which finance the “acquisition or initial construction of the dwelling”). The prohibitions offered under these laws are listed in **Table 13**.

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<sup>120</sup> “Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending.” Government Accountability Office. GAO-04-280. January 2004. p. 2.

TABLE 13: COMPARISON OF RESPONSIBLE HIGH-COST LENDING LAWS

	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. Federal law defines this as a loan with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance.	Both state and federal law prohibit balloon payments, but the state's law is a little stronger. Federal law prohibits balloon payments for loans with term lengths less than five years, whereas state law prohibits balloon payments of all term lengths. Both state and federal law allow 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.	Both federal and state law prohibit call provisions except when the customer fails to make payments required under the loan, there is fraud or material misrepresentation by the customer in connection with the loan or 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.	Both state and federal law prohibit loans with negative amortization, but state law allows negative amortization with customer consent for temporary forbearance or loan restructuring.
Default Interest Rate	An increase in the interest rate after default.	Both prohibit an increase in the interest rate due to default. Federal law dictates that refunds from loan acceleration due to default should be calculated by a method at least as favorable as the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)).
Advance Payments	A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.	Both prohibit advance payments.

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	Definition	Comments
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.	Both state and federal law prohibit lending without consideration of repayment ability of the consumer. In addition, both federal and state law presume 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 refinance 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.	Both federal and state laws prohibit refinancing (including through subsidiaries) loans within a year of the original loan unless it is beneficial for the consumer. The State of Wisconsin makes an exception for bridge loans.
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.	Both federal and 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; HOEPA does not have a similar provision.

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	Definition	Comments
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; HOEPA does not have a similar provision.
Default Recommendation	"No lender, licensed lender, 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; HOEPA does not have a similar provision.
Prepayment Penalties	A penalty for paying all or part of the principal before the date on which the principal is due.	Both do not allow prepayment penalties for refinancing with the original lender. Federal law allows prepayment penalties for the first five years following loan consummation. Wisconsin Chapter 428 allows a prepayment penalty, for three 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 percent of the original loan amount. Federal law allows a prepayment penalty only if the consumer's monthly debts are less than 50 percent of the consumer's monthly gross income at consummation. In addition, Wisconsin requires that a lender may not include a prepayment penalty unless the lender offers the customer the option of choosing a loan product without a prepayment penalty. The terms of the offer must be in writing, must contain specific wording required by Wisconsin Chapter 428, and must be initialed by the consumer.

Wisconsin Chapter 428 may offer more protection by prohibiting 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.

HOEPA is stronger in that it has an assignee liability provision, which is set forth in the indented paragraph below. This provision assigns liability to entities or individuals that purchase loans. There is a secondary market for both prime and subprime loans. Purchasers on the secondary market usually try to perform due diligence to ensure that loans were made legally and do not contain abusive terms. However, even with this due diligence it can be difficult for purchasers of loans to discover all predatory loans; loans with high fees or with fraudulent activities present the most difficulties for loan purchasers.

**12 CFR 226.34(2) Notice to assignee.** *Sell or otherwise assign a mortgage subject to Sec. 226.32 without furnishing the following statement to the purchaser or assignee: ``Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.*

Disclosures to consumers are required by HOEPA and the Wisconsin Chapter 428. Disclosure requirements aid consumers by increasing knowledge of the loan requirements. Both laws require disclosures warning that the consumers could lose their home if they default on the loan and that consumers are not required to complete the loan. HOEPA requires that the annual percentage rate, regular payment amount, the amount of any balloon payment, variable rate, and amount borrowed be disclosed. 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. Both laws require 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.<sup>121</sup> 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 giving 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

<sup>121</sup> 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)).

has been or will be a violation of the statute. Also, the following provision applies when 5 or more persons file a complaint.

**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 take action 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.”<sup>122</sup> 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 Parity for federally insured depository institutions.** *This subchapter does not apply to any state chartered bank, trust company, savings and loan association, savings bank, or credit union, or to any subsidiary of a state chartered bank, trust company, savings and loan association, savings bank, or credit union, to the extent that federal law preempts or prohibits the application of the provisions of this subchapter to a federally chartered bank, trust company, savings and loan association, savings bank, or credit union of the same type.*

Despite the fact that certain financial institutions may not be required to comply with Wisconsin Chapter 428, this legislation should help to reduce predatory lending in Wisconsin. Also, with 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

<sup>122</sup> “Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending,” Government Accountability Office, GAO-04-280, January 2004, p. 2.

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 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.

#### PAYDAY LOANS

Wisconsin is one of the few states in the country that does not have a law placing a ceiling on payday loan interest after it repealed what was then an 18 percent interest rate cap on consumer loans.<sup>123</sup> Payday lenders made 1.68 million loans in Wisconsin in 2008, lending \$723.2 million at interest rates that routinely top 500 percent. Borrowers who frequent payday loan providers say they have no other choice because their bad credit scores do not qualify them for conventional loans. Up to three-quarters of the people who come to south Madison's Financial Education Center for help in digging themselves out of a financial hole have payday loans in their history.<sup>124</sup> Borrowers reduced to going to a payday loan lender to make ends meet one pay period are unlikely to be able to pay off the loan – and the fee – in the next pay period. Instead, many borrowers roll the loan over and over again, incurring fees each payday.

“Phantom Demand,” a study conducted by the Center for Responsible Lending (CRL) released in July 2009, calculates that 76 percent of the total loan volume of the payday loan industry, which is estimated at \$27 billion a year, comes through this “churn” of loans.<sup>125</sup> More than 80 percent of borrowers take out more than one payday loan a year, the study reports, and 87 percent take out a new loan the very next pay period.<sup>126</sup> The churned loans account for \$3.5 billion in fees each year.<sup>127</sup>

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<sup>123</sup> Pat Schneider. “Wisconsin is one of few states with no ceiling on payday loan interest.” Madison.com. August 4, 2009.

<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> Id.

<sup>127</sup> Id.

As hundreds of thousands of American home owners fall behind on their mortgage payments (see the foreclosure section for the number of loans with two or more past due payments in Wisconsin), more people are turning to short-term loans with sky-high interest rates just to get by. One 2001 Progressive Policy Institute Policy Report claims that as "...many as 12 million households in the United States either have no relationship with traditional financial institutions or depend on alternative or 'fringe'<sup>128</sup> lenders for financial services. These households are disproportionately poor and minority."<sup>129</sup> People in poverty and people with cognitive or mental disabilities that restrict the ability to exercise good judgment, and who may not fully understand the terms of a payday loan or the reality of the difficulty of paying it back are more vulnerable to these predatory loans.<sup>130</sup>

Payday lending applies to housing in several ways. First, a person continuously in debt often will not qualify for a conventional mortgage if they wish to buy a home. Secondly, those who have outstanding mortgage payments and need help often turn to payday lenders who require minimal background checks to issue a loan. This perpetuates the amount of debt the consumer undertakes and ruins a borrower's credit scores. Secondly, not only does having payday loans affect the ability of many borrowers to pay or obtain a mortgage, often people find that paying back the entire loan on payday would leave them without funds necessary to meet basic living expenses, such as electricity, rent and groceries. Thus, many minority and low-income people have a hard time of paying their housing bills and face eviction or foreclosure when their only known option is to take out a payday loan with high interest rates.

In Wisconsin, there are many nonprofit resources for people seeking financial counseling to avoid borrowing from a payday lender. Wisconsinites for Responsible Lending has three main goals to curb payday lending practices:

- Have the State legislature implement a comprehensive 36% rate cap
- Promote responsible lending practices and alternatives to high-cost credit.
- Increase awareness of resources and organizations providing financial literacy education among people who are likely to take out a payday loan<sup>131</sup>

The Financial Education Center in Madison claims to be a "one-stop-shop" community resource offering integrated financial education classes, counseling, and referrals to

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<sup>128</sup> Fringe lenders in this report refer to alternative banking services that routinely charge much higher fees than mainstream banks such as payday loans, check cashing, pawnshops, rent-to-own, title loans, and secured credit.

<sup>129</sup> James H. Carr and Jenny Schuetz. "Financial Services in Distressed Communities: Framing the Issue, Finding Solutions." Progressive Policy Institute. July 2001.

<sup>130</sup> Pat Schneider. "Wisconsin is one of few states with no ceiling on payday loan interest." Madison.com. August 4, 2009.

<sup>131</sup> "Wisconsinites for Responsible Lending." Consumer Action. June 2009.

community programs and services.<sup>132</sup> Also, local reputable financial institutions that specialize in helping low- and moderate-income people can provide financial counseling services often at little or no charge.

#### 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.”<sup>133</sup> A fair appraisal contains an accurate description of the property and an analysis of comparable home sales in the area.<sup>134</sup> Appraisals may be different based on valuation method used and properties used for comparison. False appraisals may misstate the description of 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 cited a number of pressure tactics in an online appraisers 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 there to be repercussions for those who pressure appraisers to make false appraisals has been signed by over 8,300 appraisers, approximately 150 appraisers from Wisconsin.<sup>135</sup>

Though predatory appraisals can be a problem for anyone, the National Community Reinvestment Coalition found that of their cases involving suspected predatory appraisals, minorities and low-income consumers were targeted.<sup>136</sup> Predatory appraisals decrease fair housing by targeting groups that are already vulnerable.

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<sup>132</sup> “Financial Education Center.” Family Living. UW-Extension.

<sup>133</sup> Wisconsin Statutes §458.01

<sup>134</sup> National Community Reinvestment Coalition. *Predatory Appraisals: Stealing the American Dream.*, June 2005.

<sup>135</sup> Appraisers Petition. Available at [www.appraiserspetition.com/](http://www.appraiserspetition.com/).

<sup>136</sup> National Community Reinvestment Coalition. *Predatory Appraisals: Stealing the American Dream.* June 2005.

**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.”<sup>137</sup> Federally related transactions are “any real-estate related financial transaction... that a Federal banking agency or any regulated depository institution engages in or contracts for and requires the services of an appraiser.”<sup>138</sup> The federal banking agencies included are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporations, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration. Most transactions are federally related transactions because the lending institution is probably regulated by a Federal banking agency.

FIRREA established the complicated layers of regulation related to appraisers that currently exists. Two private boards of the Appraisal Foundation – the Appraisal Standards Board and the Appraiser Qualifications Board – set the minimum standards and qualifications for certified and licensed appraisers. The individual states are responsible for implementing and monitoring standards and qualifications. The federal banking agencies are responsible for adopting rules that state when an appraisal by a certified or licensed appraiser is required for financial transactions that they regulate and then ensuring compliance with Title XI. Finally, the Appraisal Subcommittee is responsible for overseeing compliance of Title XI by all parties. This is accomplished through performing periodic field reviews of each state’s regulatory agencies, monitoring the federal banking agencies, and providing grants to the Appraisal Foundation.<sup>139</sup>

Each of the federal banking agencies promulgate their own rules regarding appraisals for institutions that they regulate. However, the federal banking agencies have issued similar rules and it is not uncommon for the agencies to issue joint statements clarifying the requirements for regulated institutions.

All of the federal banking agencies do not require an appraisal for real estate loans with a value of \$250,000 or less, however institutions are required to perform an evaluation of the property value.<sup>140</sup> An evaluation must be written and contain the following:

<sup>137</sup> Federal Institutions Reform, Recovery and Enforcement Act of 1989. 12 USC 3331.

<sup>138</sup> Fritts, Steven D. “Testimony on the Current State of the Appraisal Industry Oversight and Regulation.” Housing and Transportation Subcommittee. March 24, 2004. p. 1.

<sup>139</sup> Government Accountability Office. “Regulatory Programs: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry.” GAO-03-404. May 2003. p.3.

<sup>140</sup> U.S. Treasury. Office of the Comptroller of the Currency. “Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions.” OCC 2005-6. March 22, 2005. p. 7.

- “Include the preparer’s name, address, and signature, and the effective date of the evaluation;
- Describe the real estate collateral, its condition, its current and projected use;
- Describe the source(s) of information used in the analysis;
- Describe the analysis and supporting information, and;
- Provide an estimate of the real estate’s market value, with any limiting conditions.”<sup>141</sup>

Financial institutions are given more latitude in having properties evaluated rather than appraised, appraisals are more consistent in content due to the standards imposed by the Appraisal Standards Board.

These agencies have all specified that appraiser independence is required, as well as independence for evaluators when an appraisal is not required. The agencies have regulations about the method in which appraisers are selected, the relationship of appraisers with lending decision makers, and information provided to appraisers.

Regulated institutions are allowed to accept an appraisal transferred by another financial services institution, including mortgage brokers. Transferred appraisals may be used “as long as the regulated institution has appropriate controls in place to ensure that the appraiser is acting on behalf of the financial services institution, the appraisal conforms to the requirements of the regulation and is otherwise acceptable, and the appraiser is independent from the borrower.”<sup>142</sup>

Federal banking agencies have issued regulations on acceptable procedures for appraisals, including appraiser independence and procedures for allowing usage of transferred appraisals. The major shortcoming of the regulations is that residential real estate loans with a value of \$250,000 or less are not required to have an appraisal, rather are required to have an evaluation.

On the other hand, collusion between appraisers and lenders, however, is now illegal due to recently passed federal legislation. The Home Valuation Code of Conduct (HVCC), which took effect May 1, 2009, intends to prevent lenders from selling more mortgages by influencing how appraisers determine home values. According to the HVCC, loan officers cannot hire appraisers; the bank must either set up a separate department to choose appraisers or hire a company to assign appraisers to specific properties. This Code Prohibits lenders and third parties from influencing or attempting to influence the development, result, or review of an appraisal report and Freddie Mac will no longer

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<sup>141</sup> U.S. Treasury. Office of the Comptroller of the Currency. “Interagency Appraisal and Evaluation Guidelines.” October 27, 1994. p. 6.

<sup>142</sup> U.S. Treasury. Office of the Comptroller of the Currency. “Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions.” OCC 2005-6. March 22, 2005. p. 4.

purchase mortgages from sellers that do not adopt the Code with respect to single-family mortgages delivered to Freddie Mac.<sup>143</sup>

**State Regulations for Appraisals.** In Wisconsin, the Department of Regulation and Licensing handles licensure or certification of appraisers (RL 81-87) in compliance with Title XI. Requirements consist of educational requirements, 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 Regulation and Licensing 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 the majority 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 RL 87 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 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 Regulation and Licensing 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.

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<sup>143</sup> “Home Valuation Code of Conduct,” Freddie Mac. 2009.

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).

## SECONDARY MARKETS

The secondary markets give lenders the ability to resell loans, which then are often bundled into a security. This has allowed lenders to provide loans without regard for the repayment ability of the consumer. The secondary markets have helped allow predatory lending to become more prevalent.

Though the secondary market enables predatory lending, it also increases the amount of loan funds available and decreases the interest rate. The secondary market leads to a lower interest rate through increased competition and lowering the risk to primary lenders.

One of the few resources for a state is to enact legislation holding assignees accountable for predatory loans that they purchase. This is a controversial issue, and enacting assignee liability may decrease secondary market activity in the state. Enacting assignee limited liability may be a solution, because this allows secondary market participants to measure the liability risk associated with loans.

## 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), and most MSAs include an entitlement area. There are 13 MSAs in Wisconsin; 3 of these cross into Minnesota. 2007 HMDA aggregate data from the ten MSAs that are completely in Wisconsin were used to examine differences in denial rate by race. It should be noted that this is non-random sample of loan data and may not reflect what is occurring in the whole state, but will show us what is occurring in these areas.

Subtables 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 nonoccupant loans. Refinancing loans were applied for the most, followed by home-purchase loans in 2007.

Minorities applied for loans less often than whites, which make it easier for the denial rate to be skewed by a few bad loan applicants. Also, for certain minority groups such as Native Pacific Islanders and Other Hawaiians, data was not reported for many of the smaller MSAs, which does not necessarily mean that members from this minority group did not apply for any of the loans studied; thus, the numbers reported from HMDA tend to be 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 14**; blacks often have the highest loan denial rate in Table 13. The table below does not take into account differences in income, which is an important factor in loan approval decisions.

TABLE 14 | LOAN APPLICATION DATA BY RACE OF APPLICANT AND LOAN TYPE

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
<b>Table 5-1 DISPOSITION OF APPLICATIONS FOR FHA, FHS/RHS, AND VA HOME-PURCHASE LOANS, 1 TO 4 FAMILY HOMES</b>				
American Indian / Alaskan Native	18	0.34%	1	5.56%
Asian	58	1.09%	9	15.52%
Black	316	5.92%	62	19.62%
Hispanic	240	4.50%	56	23.33%
Native Hawaiian / Other Pac. Islander	4	0.07%	n/a*	n/a
White	4,348	81.45%	467	10.74%
2 or More Races	n/a	0.00%	n/a	n/a
Race Not Available	269	5.04%	59	21.93%
Joint (White / Minority)	85	1.59%	11	12.94%
<b>Total</b>	<b>5,338</b>		<b>665</b>	<b>12.46%</b>
<b>Table 5-2 DISPOSITION OF APPLICATIONS FOR CONVENTIONAL HOME-PURCHASE LOANS, 1 TO 4 FAMILY HOMES</b>				
American Indian / Alaskan Native	217	0.31%	50	23.04%
Asian	1,412	1.99%	191	13.53%
Black	4,549	6.40%	1,613	35.46%
Hispanic	8,570	12.05%	594	6.93%
Native Hawaiian / Other Pac. Islander	71	0.10%	11	15.49%
White	51,424	72.34%	5,121	9.96%
2 or More Races	16	0.02%	2	12.50%
Race Not Available	4,069	5.72%	693	17.03%
Joint (White / Minority)	763	1.07%	91	11.93%
<b>Total</b>	<b>71,091</b>		<b>8,369</b>	<b>11.77%</b>
<b>Table 5-3 DISPOSITION OF APPLICATIONS TO REFINANCE LOANS ON 1 TO 4 FAMILY HOMES</b>				
American Indian / Alaskan Native	521	0.34%	219	42.03%
Asian	2,115	1.39%	641	30.31%
Black	11,557	7.60%	4,943	42.77%
Hispanic	5,672	3.73%	2,070	36.50%
Native Hawaiian / Other Pac. Islander	260	0.17%	85	32.69%
White	113,075	74.40%	27,522	24.34%
2 or More Races	77	0.05%	36	46.75%
Race Not Available	17,134	11.27%	5,201	30.35%
Joint (White / Minority)	1,567	1.03%	513	32.74%
<b>Total</b>	<b>151,978</b>		<b>41,230</b>	<b>27.13%</b>

\* n/a denotes that data for this category was unavailable from HMDA

(Continued from Previous Page)

<b>Table 5-4 DISPOSITION OF APPLICATIONS FOR HOME IMPROVEMENT LOANS, 1 TO 4 FAMILY HOMES</b>				
American Indian / Alaskan Native	157	0.60%	78	49.68%
Asian	361	1.38%	137	37.95%
Black	1,836	7.00%	1,051	57.24%
Hispanic	874	3.33%	391	44.74%
Native Hawaiian / Other Pac. Islander	41	0.16%	16	39.02%
White	20,636	78.67%	4,558	22.09%
2 or More Races	16	0.06%	13	81.25%
Race Not Available	1,976	7.53%	668	33.81%
Joint (White / Minority)	334	1.27%	112	33.53%
<b>Total</b>	<b>26,231</b>		<b>7,024</b>	<b>26.78%</b>
<b>Table 5-6 DISPOSITION OF APPLICATIONS FROM NONOCCUPANTS FOR HOME PURCHASE, HOME IMPROVEMENT, OR REFINANCING LOANS, 1 TO 4 FAMILY HOMES</b>				
American Indian / Alaskan Native	43	0.24%	14	32.56%
Asian	375	2.08%	110	29.33%
Black	2,857	15.82%	1,141	39.94%
Hispanic	884	4.89%	327	36.99%
Native Hawaiian / Other Pac. Islander	29	0.16%	13	44.83%
White	12,374	68.50%	2,242	18.12%
2 or More Races	2	0.01%	2	100.00%
Race Not Available	1,336	7.40%	322	24.10%
Joint (White / Minority)	163	0.90%	38	23.31%
<b>Total</b>	<b>18,063</b>		<b>4,209</b>	<b>23.30%</b>

Source: HMDA MSA / MD Aggregate Tables 2007

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 and Hispanics both are less likely to be denied a loan than other races. In fact, Hispanics have the lowest denial rates for conventional loans in four of the five income categories when comparing available data in **Table 15**.

TABLE 15 | CONVENTIONAL HOME-PURCHASE LOAN APPLICATION DATA BY RACE OF APPLICANT AND INCOME

<b>Conventional Home-Purchase Loan Application Data by Race of Applicant and Income</b>				
<b>Race / Ethnicity</b>	<b>Number of Apps. Received</b>	<b>% of Applicants</b>	<b>Number of Apps. Denied</b>	<b>Denial Rate</b>
<b>LESS THAN 50% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	40	0.57%	14	35.00%
Asian	118	1.67%	35	29.66%
Black	741	10.52%	302	40.76%
Hispanic	1,193	16.93%	141	11.82%
Native Hawaiian / Other Pac. Islander	7	0.10%	5	71.43%
White	4,556	64.67%	948	20.81%
Joint (White / Minority)	28	0.40%	10	35.71%
2 or More Races	2	0.03%	n/a	n/a
Race Not Available	360	5.11%	124	34.44%
<b>Total</b>	<b>7,045</b>		<b>1,582</b>	<b>22.46%</b>
<b>50-79% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	81	0.45%	23	28.40%
Asian	320	1.79%	47	14.69%
Black	1,707	9.57%	646	37.84%
Hispanic	2,610	14.63%	250	9.58%
Native Hawaiian / Other Pac. Islander	14	0.08%	n/a	n/a
White	12,100	67.82%	1,390	11.49%
Joint (White / Minority)	105	0.59%	16	15.24%
2 or More Races	1	0.01%	n/a	n/a
Race Not Available	903	5.06%	192	21.26%
<b>Total</b>	<b>17,841</b>		<b>2,564</b>	<b>14.37%</b>
<b>80-99% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	38	0.35%	6	15.79%
Asian	220	2.00%	27	12.27%
Black	725	6.59%	242	33.38%
Hispanic	1,281	11.64%	86	6.71%
Native Hawaiian / Other Pac. Islander	15	0.14%	3	20.00%
White	7,987	72.60%	803	10.05%
Joint (White / Minority)	130	1.18%	13	10.00%
2 or More Races	3	0.03%	2	66.67%
Race Not Available	602	5.47%	122	20.27%
<b>Total</b>	<b>11,001</b>		<b>1,304</b>	<b>11.85%</b>

**(Continued from Previous Page)****100-119% OF MSA MEDIAN**

American Indian / Alaskan Native	15	0.17%	2	13.33%
Asian	220	2.55%	24	10.91%
Black	426	4.94%	149	34.98%
Hispanic	998	11.58%	40	4.01%
Native Hawaiian / Other Pac. Islander	7	0.08%	1	14.29%
White	6,400	74.23%	541	8.45%
Joint (White / Minority)	105	1.22%	11	10.48%
2 or More Races	6	0.07%	n/a	n/a
Race Not Available	445	5.16%	67	15.06%
<b>Total</b>	<b>8,622</b>		<b>835</b>	<b>9.68%</b>

**120% OR MORE OF MSA MEDIAN**

American Indian / Alaskan Native	43	0.16%	5	11.63%
Asian	534	2.01%	58	10.86%
Black	950	3.57%	274	28.84%
Hispanic	2,488	9.36%	77	3.09%
Native Hawaiian / Other Pac. Islander	28	0.11%	2	7.14%
White	20,381	76.67%	1,439	7.06%
Joint (White / Minority)	395	1.49%	41	10.38%
2 or More Races	4	0.02%	n/a	n/a
Race Not Available	1,759	6.62%	188	10.69%
<b>Total</b>	<b>26,582</b>		<b>2,084</b>	<b>7.84%</b>

Source: HMDA Application Data 2007 - Table 5-2

TABLE 16 | REFINANCE LOAN APPLICATION DATA BY RACE OF APPLICANT AND INCOME

<b>Refinance Loan Application Data by Race of Applicant and Income</b>				
<b>Race / Ethnicity</b>	<b>Number of Apps. Received</b>	<b>% of Applicants</b>	<b>Number of Apps. Denied</b>	<b>Denial Rate</b>
<b>LESS THAN 50% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	69	0.41%	27	39.13%
Asian	252	1.51%	103	40.87%
Black	2,512	15.00%	1,208	48.09%
Hispanic	1,144	6.83%	497	43.44%
Native Hawaiian / Other Pac. Islander	49	0.29%	23	46.94%
White	10,328	61.68%	3,514	34.02%
Joint (White / Minority)	49	0.29%	22	44.90%
2 or More Races	9	0.05%	5	55.56%
Race Not Available	2,332	13.93%	1,023	43.87%
<b>Total</b>	<b>16,744</b>		<b>6,422</b>	<b>38.35%</b>
<b>50-79% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	175	0.46%	70	40.00%
Asian	556	1.47%	196	35.25%
Black	3,795	10.00%	1,617	42.61%
Hispanic	2,187	5.76%	785	35.89%
Native Hawaiian / Other Pac. Islander	71	0.19%	22	30.99%
White	26,595	70.08%	7,761	29.18%
Joint (White / Minority)	212	0.56%	101	47.64%
2 or More Races	34	0.09%	17	50.00%
Race Not Available	4,327	11.40%	1,107	25.58%
<b>Total</b>	<b>37,952</b>		<b>11,676</b>	<b>30.77%</b>
<b>80-99% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	99	0.40%	50	50.51%
Asian	382	1.53%	131	34.29%
Black	1,785	7.13%	751	42.07%
Hispanic	987	3.94%	353	35.76%
Native Hawaiian / Other Pac. Islander	32	0.13%	10	31.25%
White	18,765	74.97%	4,917	26.20%
Joint (White / Minority)	280	1.12%	94	33.57%
2 or More Races	11	0.04%	5	45.45%
Race Not Available	2,688	10.74%	895	33.30%
<b>Total</b>	<b>25,029</b>		<b>7,206</b>	<b>28.79%</b>

(Continued from Previous Page)

<b>100-119% OF MSA MEDIAN</b>				
American Indian / Alaskan Native	64	0.30%	28	43.75%
Asian	275	1.29%	70	25.45%
Black	1,224	5.75%	504	41.18%
Hispanic	558	2.62%	201	36.02%
Native Hawaiian / Other Pac. Islander	31	0.15%	12	38.71%
White	16,519	77.61%	3,778	22.87%
Joint (White / Minority)	315	1.48%	100	31.75%
2 or More Races	3	0.01%	1	33.33%
Race Not Available	2,295	10.78%	701	30.54%
<b>Total</b>	<b>21,284</b>		<b>5,395</b>	<b>25.35%</b>
<b>120% OR MORE OF MSA MEDIAN</b>				
American Indian / Alaskan Native	114	0.22%	44	38.60%
Asian	650	1.28%	141	21.69%
Black	2,241	4.40%	863	38.51%
Hispanic	796	1.56%	234	29.40%
Native Hawaiian / Other Pac. Islander	77	0.15%	18	23.38%
White	40,868	80.18%	7,552	18.48%
Joint (White / Minority)	711	1.39%	196	27.57%
2 or More Races	20	0.04%	8	40.00%
Race Not Available	5,492	10.78%	1,386	25.24%
<b>Total</b>	<b>50,969</b>		<b>10,442</b>	<b>20.49%</b>

Source: HMDA Application Data 2007 - Table 5-3

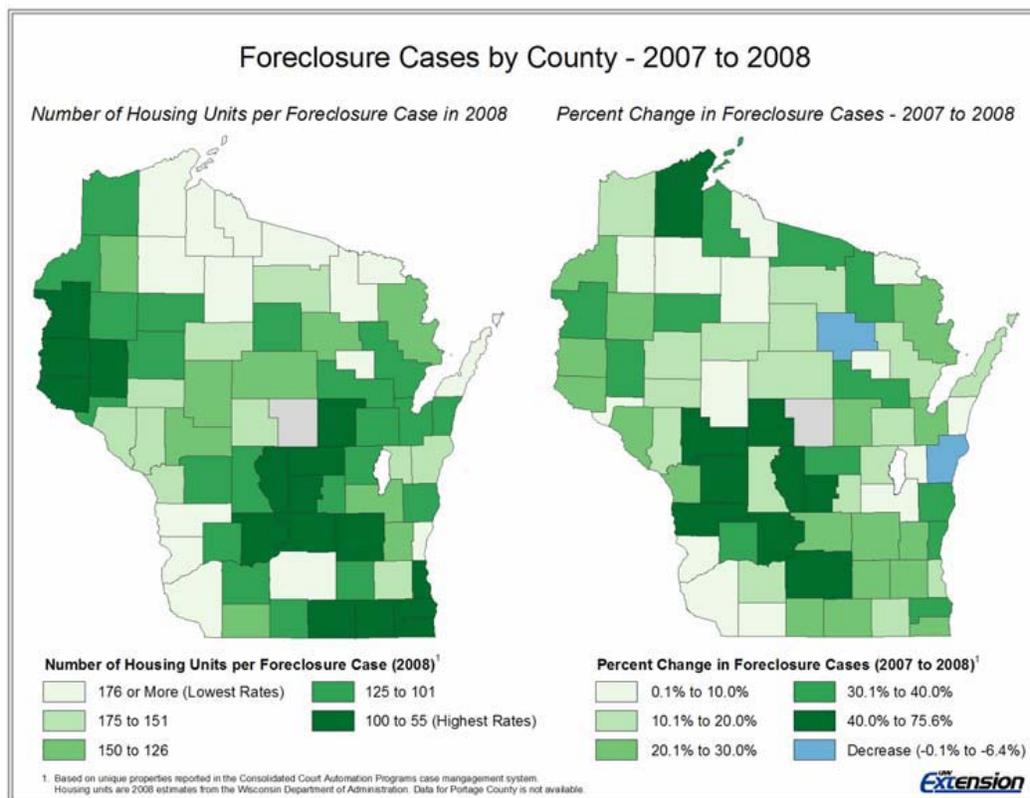
HMDA data excludes factors that would be considered in a loan decision, such as debt to income ratio, credit score, and financial reserves. Without this additional information it is difficult to equate these disparities with discrimination. Further data would be needed to explain these differences.

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. Also, for reasons often debated in financial research, minorities are denied loans more frequently than whites.

#### SUBPRIME LENDING AND FORECLOSURES

With the advent of predatory lending, subprime mortgages, and high unemployment rates, foreclosures have become common in today's housing market. As shown in **Figure 12**, the number of foreclosures from 2007-2008 in Wisconsin increased in all counties except Langlade and Manitowoc.

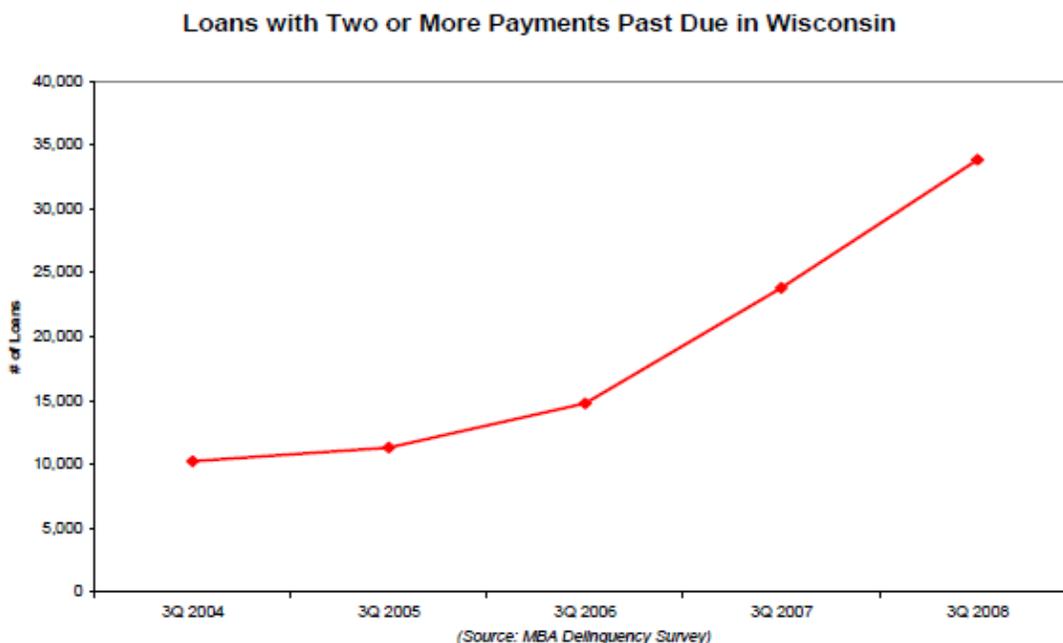
FIGURE 12 | FORECLOSURES IN WISCONSIN



Many studies predict that the number of foreclosures will continue to increase in the upcoming years both in Wisconsin and across the United States due to the amount of adjustable rate mortgages with balloon payments coming due and the increasing unemployment rates around the country limiting one's ability to pay any bill. A study conducted by the Center for Responsible Lending estimates that 83,400 homes will be lost through foreclosure over the next four years in Wisconsin alone.<sup>144</sup> According to **Figure 13**, the number of loans with two or more payments past due in Wisconsin has steadily increased since the third quarter of 2004. A loan with past payments due often signals that a household is in trouble financially and may thus file for foreclosure if they do not have the means to pay their mortgage.

<sup>144</sup> "Wisconsin Foreclosures: Impact and Opportunities." Center for Responsible Lending. January 2009.

FIGURE 13 | LOANS WITH TWO OR MORE PAYMENTS PAST DUE IN WISCONSIN



Why are foreclosures an issue for fair housing? One way foreclosures impact fair housing is through subprime loans. Several studies have documented pervasive racial discrimination in the distribution of subprime loans.<sup>145</sup> Many foreclosures are 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 fixed-rate mortgages.<sup>146</sup> Currently, the majority of the foreclosures in the country are stemming from subprime loans, and of these loans, the most toxic (due to their high foreclosure and default rates) are loans called Adjustable Rate Mortgages<sup>147</sup> (ARMs).<sup>148</sup> At the end of the third quarter of 2008, the foreclosure rate for prime ARMs was 1.77%. The foreclosure rate was 2.2% for fixed-rate subprime mortgages and 6.4% for subprime ARMs.<sup>149</sup> Furthermore, many borrowers who ended up with subprime loans in fact qualified for fixed rate loans in the prime market.<sup>150</sup> The National Fair Housing Alliance reported in their 2009 Fair Housing Trends Report:

<sup>145</sup> “2009 Fair Housing Trends Report.” National Fair Housing Alliance. pg. 38-39.

<sup>146</sup> *Id.*, pg. 38.

<sup>147</sup> **Adjustable-rate mortgages (ARMs)** are loans with interest rates that change. ARMs often have lower monthly payments than fixed-rate mortgages for the first few years and then a variable rate that may be much higher. Loans called “3/27” or “2/28” ARMs have fixed interest rates for a few years (the first number) followed by a variable rate for the rest of the 30-year period (the second number).

<sup>148</sup> *Id.*, pg. 12

<sup>149</sup> *Id.* pg. 12

<sup>150</sup> *Id.*, pg. 39

*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.<sup>151</sup> In all, it is estimated that persons of color will lose between \$164 billion and \$213 billion in total wealth due to the subprime loans originated in the past eight years.<sup>152</sup>

Furthermore, foreclosures also have spillover effects that further harm neighborhoods and wider communities. Research by Dan Immergluck of the Georgia Institute of Technology shows that for “every foreclosure within one-eighth of a mile of a single-family home, property values are expected to decline by approximately 1 percent.<sup>153</sup> For neighborhoods with multiple foreclosures, property values are impacted even more.<sup>154</sup>

Declining property values and increasing foreclosures are also associated with reduced property tax revenue and increased government costs such as fire and police services. This has a tremendous effect on funding for schools and provision of municipal services of all types. Municipalities are finding their departments of code enforcement burdened beyond capacity – cleaning and boarding up foreclosed properties, fighting rodent issues, mowing lawns, etc. Thus, since many communities of color are already lacking in essential services, the spillover effects of foreclosures serve to aggravate an already grave imbalance.<sup>155</sup>

In Wisconsin, mortgage foreclosures are conducted judicially in accordance with Wis. Stat. chapter 846.<sup>156</sup> The entire process takes between four and 18 months, depending on several factors.<sup>157</sup> Such factors include, but are not limited to, the type of real estate, the

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<sup>151</sup> Id., pg. 39

<sup>152</sup> Id., pg. 39

<sup>153</sup> Id., pg. 40

<sup>154</sup> Id., pg. 40

<sup>155</sup> Id., pg. 40

<sup>156</sup> Mark Richard Cummisford. “Advising Clients Facing Foreclosure.” *Wisconsin Lawyer*. December 2007.

<sup>157</sup> Id.

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. Foreclosures automatically terminate most tenancies in Wisconsin.<sup>158</sup> Given the financial straits of the defaulting landlord, tenants generally will lose their security deposits and any prepaid rent. Some tenants are unaware of the foreclosure until they are served with a 24-hour notice to vacate.

As a result, the State of Wisconsin passed laws to provide protections for tenants whose landlords are in foreclosure. The Residential Tenants in Foreclosure Act, codified at Wis. Stat. sections 704.35 and 846.35, addresses problems faced by tenants whose landlords are in foreclosure by requiring that notice be given to residential tenants at various stages of a foreclosure and by providing other protections.<sup>159</sup> The Act's key provisions involve notice, an opportunity for extended possession, retention of rent for the last month in possession, and exclusion of certain information from the public access Consolidated Court Automation Program (CCAP) website.<sup>160</sup>

#### 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."<sup>161</sup> In 2008 alone NFHA and several of its local fair housing organization members have identified more than 7,500 discriminatory ads placed by housing providers on various websites.<sup>162</sup> NFHA claims, "These advertisements reinforce the message to public readers that 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."<sup>163</sup>

The most common Fair Housing Act violation that NFHA and its members found on the Internet was advertising discriminating against families with children.<sup>164</sup> An example of discriminatory language found in an ad for a two bedroom unit based in Chicago includes the language "Couples preferred."<sup>165</sup> In Wisconsin, the NFHA report found one fair housing discrimination case in Milwaukee during its investigation. Craigslist, the source of the

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<sup>158</sup> Mark A. Silverman. "Residential Tenants in Foreclosure Act: Protecting Tenants." Wisconsin Lawyer. August 2009.

<sup>159</sup> Id.

<sup>160</sup> Id.

<sup>161</sup> "For Rent: No Kids! How Internet Housing Advertisements Perpetuate Discrimination." National Fair Housing Alliance. August 11, 2009. pg. 2.

<sup>162</sup> Ibid. pg. 2

<sup>163</sup> Ibid. pg. 2

<sup>164</sup> Ibid. pg. 5

<sup>165</sup> Ibid. pg. 5

overwhelming majority of housing advertising in today’s market, and other Internet sites provide a convenient forum for illegal housing discrimination.<sup>166</sup> 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 and legal source of income. 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, but are listed just once 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 vis-à-vis an impediment may be more indirect. Notwithstanding these differences, the State has a responsibility to help dismantle each of the identified impediments.

### **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.

In order to secure substantial equivalency, many of the changes suggested by HUD would require 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

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<sup>166</sup> Ibid. pg. 6

receiving the HUD letter in 2006. The revised Open Housing Law requires representation for the complainant by the Attorney General in cases that both the Department of Workforce Development and the Attorney General find probable cause. Representation by the Attorney General would be provided for administrative and civil hearings; the complainant can elect a civil action rather than an administrative hearing. If the legislative amendments to Wisconsin's Open Housing law are introduced in the future when there is more funding available from the State budget to cover the Attorney General's court fees, changes may allow the State to be declared substantially equivalent, thus allowing the State to receive more federal funds for enforcement of the fair housing laws.

The changes to the Open Housing Law, if passed, also may encourage greater reporting of fair housing violations, because representation by the Attorney General is available. However, increased reporting will not occur if there is not awareness of the availability of representation in fair housing cases.

### **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.<sup>167</sup> Because Lake Bluff had acquired vested rights in the commercial zoning of the property prior to the zoning change and the City of South Milwaukee failed to give it notice and an opportunity to be heard, 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. Whether intentional or not, the City of South Milwaukee is an example of 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

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<sup>167</sup> *State Fin. Bank v. City of S. Milwaukee*, [2007 U.S. Dist. LEXIS 41623 \(E.D. Wis., June 6, 2007\)](#)

generally reducing affordability.<sup>168</sup> In short, zoning and impact fees can have the effect of “disparate impact”: policies that appear neutral on their face may actually increase segregation.

### **Wisconsin Smart Growth Law Concerns**

The State of Wisconsin’s Smart Growth law could be a tool to improve fair housing choice. The law gives housing advocates the opportunity to be involved in housing-related decision-making in their communities. Since the enactment of the Smart Growth law in 1999, comprehensive planning has ensured that citizens across the state have a voice in the future of their communities. In August 2009, over 80% of all of the communities in the state have adopted plans or are currently in the process of developing a plan.

Presently, however, there are two main concerns related to Smart Growth that pose impediments to fair housing. First, since the comprehensive planning law’s inception, several bills have been introduced in the State legislature that would eliminate Smart Growth or lessen its effectiveness. Weakening this law threatens the opportunity for housing advocates to play a role in their communities’ housing policy development, thus threatening the opportunity for a greater variety of housing choices.

Secondly, there is no enforcement mechanism in the Smart Growth law. The law contains goals in its Smart Growth Housing Element, which would expand affordable housing opportunities if implemented by a community. Specifically, the law requires communities to have “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 law requires that zoning ordinances of cities, counties, and villages must be consistent with their comprehensive plans and thus supply a range of housing stock at various income levels. However, stating the number of affordable housing units the local government intends to support is not required and DOA cannot approve the quality of the comprehensive plan’s goals and objectives. Subsequently, affordable housing goals tend to be vague policy statements rather than proposing a quantifiable number of affordable housing units. Therefore, the number of affordable units built often is far below the need of housing for low- and moderate-income households.

### **Wisconsin Housing and Economic Development Authority’s (WHEDA) Low-Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP) Scoring**

Wisconsin Housing and Economic Development Authority’s Low Income Housing Tax Credit (LIHTC) distributes over \$40 million annually to low-income housing projects. WHEDA uses a tool, the Qualified Allocation Plan (QAP), to decide which projects to fund.

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<sup>168</sup> Gregory S. Burge, Arthur C. Nelson, and John Matthews. “Effects of Proportionate-Share Impact Fees.” pg. 3.

The QAP scores applicants according to a complex point system where certain points are allocated to projects that fit within the specified categories. These categories include rewarding developers with points if they serve the lowest-income residents and the elderly, gain local support from the community, provide universal design features in the units, and secure financing for the project.

As a major vehicle for low-income housing funding in Wisconsin, the QAP scoring categories and point allocation determines which low-income housing projects that will be developed in Wisconsin. Every year the QAP is revised to reflect the growing needs of the community and to ensure the best projects receive the tax credits. The 2009-2010 QAP scoring allocation changed in several ways. There was a 20 point increase in the number of points awarded to those projects serving the lowest-income residents from the last version of the QAP in 2007-2008. The number of points that can be awarded for universal design and supportive housing did not change from last year. The category that measures the ability of the project to serve large families increased by 6 points. The total number of points awarded to projects that are targeted to provide elderly assisted living decreased by seven points. The lower assisted living scores can be attributed to ensuring that developers understand the special relationship between the developer and service provider required to successfully manage supportive services or Resident Care Apartment Complexes (RCAC), and that developers are not looking at such facilities solely as a scoring boost for their applications.<sup>169</sup>

The majority of Wisconsin's fair housing cases reported in the past five years are disability-related. The need for low-income housing with accessible design is high in Wisconsin and this is not reflected in WHEDA's 2009-2010 QAP when only 6% of the total 2009-2010 QAP points are allocated to accessible design. This policy has the potential to limit housing opportunity for those who are disabled and is thus a potential impediment to fair housing choice in Wisconsin.

### **Sexual Harassment, Sexual Assault, and Domestic Violence**

The federal Fair Housing Act protects individuals against discrimination because of sex. Courts have consistently recognized sexual harassment as a form of discrimination that violates the Fair Housing Act.<sup>170</sup> Claims may be filed even if the alleged victim did not experience the loss of a housing opportunity or some tangible economic loss.

Wisconsin had 26,323 cases of domestic violence in 2005 reported to the Department of Justice.<sup>171</sup> Using the Center for Disease Control's estimate that one in seven women

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<sup>169</sup> Jerome Sullivan. "Wisconsin – A 2008 Perspective." *Avenues to Affordability*. Great Lakes Capital Fund. pg. 18.

<sup>170</sup> U.S. Department of Housing and Urban Development. Kim Kendrick, "Questions and Answers on Sexual Harassment under the Fair Housing Act." November 17, 2008.

<sup>171</sup> 2006-08 Violence Against Women Act STOP Formula Grant Statewide Three-Year Implementation Plan. Wisconsin Office of Justice Assistance. June 2007. pg. 8.

in Wisconsin is sexually assaulted in her lifetime, OJA projects that about 17,000 females experience sexual assault each year, which is about one third of the cases actually reported to law enforcement officials.<sup>172</sup> Although Wisconsin has a plethora of agencies around the state working around the clock to curb discrimination based on sex, many of these agencies are within major cities. With continued efforts, the STOP VAWA program's funded projects have made significant inroads into populations and communities where domestic violence and sexual assault services are not considered needed as the crimes of violence against women are not recognized as such.<sup>173</sup> However, some populations have not been reached and as a result, discrimination because of one's sex still occurs in underserved areas.

### **Extent of Discrimination Reported**

Complaint data is one of the few measures of discrimination in housing. It is likely that not all cases of discrimination are reported. The lack of a good measurement for discrimination makes it difficult to assess if the state is making progress in reducing discrimination.

## **Private Market Impediments**

### **Lack of Equal Housing Opportunity in the Mortgage Lending Market**

The mortgage lending market is complex, and thus it is no surprise that there are many ways in which discrimination and unequal opportunities exist within it. These multiple impediments are 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.<sup>174</sup>

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.

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<sup>172</sup> Ibid., pg. 8

<sup>173</sup> Ibid., pg. 43-44

<sup>174</sup> This latter form of discrimination is commonly referred to as mortgage 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 are 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. Given that many people are unaware of their rights in the lending market, predatory lending is greatly underreported. Since 2002, MMFHC has received over 500 complaints of predatory lending; 90% were based on race.

The Home Ownership and Equity Protection Act (HOEPA) and the Homeowner's Protection Act do not apply to all predatory loans, so predatory lending can still legally occur. Loans with abusive terms that are not in excess of the annual points and fees or annual percentage rate are not protected by the predatory lending laws. The effectiveness of enforcement activities is unknown because no complaints have been filed with DFI. Both Wisconsin and federal law do not make it illegal to have a clause in loans requiring arbitration; arbitration clauses deny consumers the right to go to court to seek damages. Though the new Homeowner's Protection Act increases fair housing by eliminating some predatory loans, loans that include abusive terms still occur legally.

**Predatory Appraisals.** The Home Valuation Code of Conduct rules (HVCC), which took effect May 1, 2009, intends to prevent lenders from selling more mortgages by influencing how appraisers determine home values. According to the code of conduct, loan officers cannot hire appraisers; the bank must either set up a separate department to choose appraisers or hire a company to assign appraisers to specific properties. The HVCC prohibits lenders and third parties from influencing or attempting to influence the development, result, or review of an appraisal report and Freddie Mac will no longer purchase mortgages from sellers that do not adopt the Code with respect to single-family mortgages delivered to Freddie Mac. However, the major shortcoming of the regulations is that residential real estate loans with a value of \$250,000 or less are not required to have an appraisal, rather are required to have an evaluation. For many low-income and minority populations, a home that is affordable to them is usually under \$250,000, which makes the new Home Valuation Code of Conduct less effective in ensuring that predatory appraisals do not take place.

**Lack of Spanish- and Hmong-speaking Lenders and Lenders of Color.** For persons new to this country who do not speak English, or are more comfortable speaking another language, obtaining a home mortgage can be especially stressful. Because non-English speaking persons seeking a mortgage often have to rely on their children or other family members to translate, errors and misunderstandings are more likely to occur, and it is easier for lenders to take advantage of them.

**Lack of Flexible Underwriting to Accommodate Persons with No Credit History.**

Persons new to this country often do not have established credit required to obtain a prime mortgage. In addition, a disproportionate number of persons of color do not have an established relationship with a conventional bank or financial institution. These situations do not make these groups any less likely to be able to responsibly take on a mortgage, but do make it difficult for lenders to use conventional underwriting guidelines to give them a mortgage.

**Lending Gap.** According to 2007 HMDA lending data, there is an emerging racial lending gap in Wisconsin's MSAs. As shown in previous sections, Hispanics and blacks obtained home and refinance loans at rates less than their proportion in the Wisconsin population. While the gap has not reached the level of disparity of Milwaukee, it is imperative to address the gap now, while the State is still in a position to remedy the situation.

**Online Housing Market**

In 2008 alone NFHA and several of its local fair housing organization members have identified more than 7,500 discriminatory ads placed by housing providers on various websites.<sup>175</sup> The most common Fair Housing Act violation that NFHA and its members found on the Internet was advertising discriminating against families with children.<sup>176</sup> An example of discriminatory language found in an ad for a two bedroom unit based in Chicago includes the language "Couples preferred."<sup>177</sup> In Wisconsin, the NFHA report found one fair housing discrimination case in Milwaukee during its investigation. Craigslist, the source of the overwhelming majority of housing advertising in today's market, and other Internet sites provide a convenient forum for illegal housing discrimination.<sup>178</sup> 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. The federal Fair Housing Act and Wisconsin's Open Housing law are both vague on how to enforce fair housing practices online and this is a major impediment to fair housing.

**Discrimination in the Homeowners Insurance Market**

Homeowners insurance is a requirement for a home mortgage; therefore, the impact of discrimination in the insurance industry is reflected in racial and ethnic homeownership rate disparity, a significant problem in Wisconsin. Racial discrimination in the provision of insurance not only denies fair housing choice, but also fosters disinvestment and the

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<sup>175</sup> Ibid. pg. 2

<sup>176</sup> Ibid. pg. 5

<sup>177</sup> Ibid. pg. 5

<sup>178</sup> Ibid. pg. 6

deterioration of neighborhoods. Discrimination in the provision of homeowners insurance can take many forms. Insurance redlining is described as the systematic refusal of insurers to issue policies and/or providing inferior terms and conditions on property in certain neighborhoods, based on racial stereotypes or other non-market criteria. Redlining is also demonstrated in higher rates for properties in minority neighborhoods, the relocation of insurance agencies outside of defined areas and the selective placement of agents on the basis of race. Minimum policy requirements and restrictions or penalties on older homes also have a discriminatory impact on older city, neighborhoods with a higher proportion of minorities.

Formal complaints and lawsuits against providers of homeowners insurance began to emerge in the late 1980s in southeastern Wisconsin when the local branch of the National Association for the Advancement of Colored People (NAACP) and eight African American homeowners filed a federal lawsuit against American Family Insurance Company (AFI) alleging redlining. In 1994, based on testing conducted by the Metropolitan Milwaukee Fair Housing Council (MMFHC), the National Fair Housing Alliance filed complaints with HUD against Allstate, State Farm and Nationwide Insurance Companies alleging that these three insurers engaged in discriminatory insurance practices in Milwaukee.<sup>179</sup>

The subsequent resolution of these lawsuits and HUD complaints provided far-reaching changes in the manner in which these companies provided homeowners insurance and the availability of such products in Wisconsin. The companies agreed to modify their underwriting guidelines in order to maximize the ability of residents of predominantly minority and racially integrated neighborhoods to procure comprehensive and affordable homeowners insurance products.<sup>180</sup>

Despite the plethora of academic studies and legal action taken, individual complaints concerning discrimination in the issuance of insurance are relatively rare. Insurance discrimination can be subtle, and without knowledge of underwriting policies and/or rate standards, it is difficult for homeowners seeking insurance to know that they have received unfavorable treatment.

In addition to discrimination in the insurance market, language barriers can be significant obstacles to equal access to insurance. In order to obtain comprehensive homeowners insurance, it is imperative that homebuyers have a clear understanding of insurance products and property needs. The area of homeowners insurance can be very complex and technical; some homeowners may be confused or lack knowledge about the proper coverage necessary for their property. This can be exacerbated when homeowners speak languages other than English, or for whom English is a second language. In Wisconsin, the shortage of Spanish and Hmong-speaking insurance agents can be an impediment not only

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<sup>179</sup> William R. Tisdale and Carla Wertheim. "Giving Back to the Future." *Organizing Access to Capital*. 2003.

<sup>180</sup> Ibid.

to minority homeownership, but also for obtaining proper insurance coverage for this group of consumers.

### **Accessible Housing Supply**

An inadequate supply of accessible housing is a problem that plagues most housing markets, in Wisconsin. While the actual number of accessible housing units in the private market is not available, the need for such housing is an urgent concern for disability rights advocates. According to the 2005-2007 American Community Survey, 3.5% of Wisconsin residents have disabilities.

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 71% 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 1969, which is older than the United States' median of 1974. 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 accessible housing, disability advocates have indicated that there is a particular need for accessible housing with three or more bedrooms.

Moreover, it is worth noting that approximately 36% of Wisconsin's households are headed by individuals 65 years of age and older with a disability. Adding accessibility features to housing promotes aging in place, rather than the necessity of moving to an institutional setting.

Finally, a lack of accessible housing impacts not only the people who would actually 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 others 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.<sup>181</sup> Wisconsin's Open Housing law requires those with disabilities who need a service dog in their rental unit to upon request show credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing, or mobility.

Some landlords have a no pet policy when renting to tenants and are hesitant to accommodate those with disabilities who need a service animal to live with them. In Minnesota, 21 complaints of disability discrimination in housing were filed with HUD few of those involved service animals.<sup>182</sup> This is attributed to the lack of education among landlords on the needs of service animals for people with disabilities.<sup>183</sup> The lack of education regarding service animals is likely true in Wisconsin and other states around the country. Wisconsin's Open Housing law prohibits discrimination against those individuals with impaired vision, hearing or mobility but is silent on those people with mental disabilities who wish to occupy a rental unit with a service animal.<sup>184</sup> The vagueness of allowing people with mental disabilities the ability to have a service animal and lack of landlord education on service dog issues can be an impediment to those with disabilities searching for accessible housing.

### **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. Like a lack of affordable housing, substandard housing and overcrowded housing conditions are fair housing impediments, as they 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 26% of Wisconsin's housing units built before 1950 and many of these units may be in some state of disrepair.

Although overcrowding in Wisconsin decreased from 2000 to 2007 by .96 percentage points overall, it still exists predominantly in minority populations.<sup>185</sup> In 2007, almost 10% of

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<sup>181</sup> 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.

<sup>182</sup> Alex Ebert. "What are the limits of no-pet policies." *Start Tribune*. .

<sup>183</sup> Ibid.

<sup>184</sup> Courts have applied the reasonable accommodation clause to pets that provide emotional support to people with mental disabilities. See *HUD v. Dutra et al.* 1996 WL 657690 (HUDALJ).

<sup>185</sup> The U.S. Census defines a household as overcrowded if it includes more persons than the number of rooms it occupies.

Hispanics and 13% of Asians experienced overcrowding whereas only .9% of white householders experienced overcrowding.

According to the 2005-2007 American Community Survey, in owner occupied housing, more than 78 percent of the units had three or more bedrooms. However in rental housing, more than 70 percent of the rental housing stock had two or fewer bedrooms. As discussed in another section from the 2005-2007 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 424,300 people who speak English as a second language (ESL) that have varying levels of competency in the English language.<sup>186</sup> It is likely 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 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.

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<sup>186</sup> U.S. Census Bureau. 2005-2007 American Community Survey.

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

The most critical element of the “Analysis of Impediments to Fair Housing” is 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**

Future changes to the Open Housing law proposed by Wisconsin elected officials may allow the State to be declared substantially equivalent, and thus receive federal funds for enforcement of the fair housing laws. However, this must be requested by the state and the funding for the Attorney General’s fees must be subsidized with help from other sources besides limited state funds.

HUD requires the State official having primary responsibility for the state fair housing law to issue a request. First, HUD determines if the law appears to be substantially equivalent to federal law. If it is, the state is granted a three year interim approval. After the three-year period, HUD determines if in practice the law is substantially equivalent to federal law, and at that time the state is given a five-year certification.

Being declared substantially equivalent would allow Wisconsin to participate in the Fair Housing Assistance Program (FHAP), administered by HUD. Initially FHAP funds are given to help in capacity building. In subsequent years funds are given for complaint processing, training, and administrative costs.

#### ***ACTIONS***

- The Division will support the Equal Rights Division in requesting substantial equivalency, if they pursue it from HUD.
- The Division will revise its fair housing information to reflect the revisions to the Open Housing Law as the law changes.
- The Division will publicize the changes to Wisconsin’s Open Housing Law as they are made

### **Local Land Use Regulations**

The State of Wisconsin’s Comprehensive Planning law addresses barriers to comprehensive land-use planning for local governments. This was initiated to strengthen various planning activities of local governments leading to better coordination of housing, economic growth, land-use and transportation, among others. Comprehensive Planning requires all aspects of planning, including housing and economic development, be analyzed in accordance with other local level planning. Matching grants are available from the

Department of Administration. As of August 2009, 1,139 communities have received grants for comprehensive planning.

Communities are still given control over zoning, if they have it, but are now being required to make zoning regulation consistent with their comprehensive plan. As a way to recognize and support communities that produce and implement outstanding comprehensive plans, state agencies need to include in their funding approval processes a review to check if the projects requesting state funding are in accordance with the comprehensive plan's objectives and goals. This would be an easy way to enforce the consistency requirements and ensure that implementation of the plan is taking place.

### **ACTIONS**

- New Division of Housing and Community Development (DHCD) strategic initiatives will give priority to communities implementing their comprehensive plan.
- The Division will encourage other state agencies to review consistency requirements when considering to fund local projects
- The Division will monitor legislative changes that would affect local land-use planning with an impact on fair housing.

## **Wisconsin Housing and Economic Development Authority's (WHEDA) Low-Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP) Scoring**

By revising the Qualified Allocation Plan (QAP) every two years, WHEDA is refining a complicated scoring process to ensure that the best affordable housing projects for residents in Wisconsin receive tax credits. While reviewing the QAP for future rounds of funding, WHEDA should give scoring preference to projects that will greatly benefit the protected classes in Wisconsin.

### **ACTIONS**

- The Division will encourage WHEDA to revise future QAPs to give preference to projects that provide affordable housing to the protected classes of Wisconsin by submitting a memo during the public review process addressing any concerns

## **Sexual Harassment, Sexual Assault, and Domestic Violence**

In Wisconsin, there are concentrations of services for victims of sexual harassment, sexual assault, and domestic violence in mostly urban areas. This means that some populations do not have easy access to STOP VAWA programs run by the Wisconsin Office of Justice Assistance (OJA). OJA administers this program on behalf of the Governor, developing a statewide plan for use of the State STOP (Services, Training, Officers, Prosecutors) formula grant and awarding state and local sub-grants. Assistance with planning and other input are provided by the VAWA Planning Advisory Committee, the Wisconsin Coalition Against

Sexual Assault (WCASA) and the Wisconsin Coalition Against Domestic Violence (WCADV).

Past awards have included funding for law enforcement and other agency training, coordinated community response team development, specialized enforcement, specialized prosecution and victim services. Non-competitive sub-grants are also awarded for statewide training and technical assistance in a variety of areas, with needs determined by the annual planning process.

VAWA funds are also used in the justice system training program to provide training to law enforcement officers, district attorneys, advocates and others across the state on responding to, and prosecuting domestic violence, sexual assault and strangulation and stalking crimes.

### **ACTIONS**

- The Division will work with OJA to train staff to be sensitive to the needs of victims in housing to make their housing programs friendlier to victims of domestic violence, dating violence, or stalking.
- The Division will give be sensitive to the special needs of victims of domestic violence, dating violence and stalking in underserved non-entitlement jurisdictions of Wisconsin when administering programmatic funds.

### **Extent of Discrimination Reported**

It is difficult to measure the extent of discrimination, and thus not possible to measure whether actions are decreasing discrimination. Paired tests and survey data are methods used to measure discrimination. Both of these methods are not infallible, but are able to offer a sample of what is occurring.

One of the major problems with survey data is getting enough survey responses and ensuring that the sample is random.

Paired testing is commonly used in fair housing litigation and has also been used to measure the extent of discrimination. Paired testing can be helpful in identifying steering, which is a form of discrimination that often goes undetected.

At this time it is not feasible for DHCD to undertake a study measuring the extent of discrimination throughout Wisconsin.

### **ACTIONS**

- DHCD has provided funding to MMFHC, which expands statewide testing activities.

## 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. The Home Ownership and Equity Protection Act (HOEPA) and the Homeowner's Protection Act provide some protection against predatory lenders, but have no protections for initial acquisitions, and abusive terms are still allowed in loans that are not covered by the predatory lending laws.

### *ACTIONS*

- WHEDA is a member of the National Community Reinvestment Coalition (NCRC), making Consumer Rescue Funds (CRF) available in the state. CRF funds are available to refinance predatory loans. The Division is assisting WHEDA by providing a list of potential partner agencies that provide homeownership financial counseling.
- The Division will publicize the availability of CRF funds.
- The Division will report on refinancing activities in the Consolidated Action Plan Evaluation Report (CAPER).

**Predatory Appraisals.** Appraisals that overstate the value of homes result in an equity loss for the owners and decreased affordability by increasing fees (many fees are based on the value of the home). Although the Home Valuation Code of Conduct (HVCC) intends to minimize the inaccuracy of appraisals influenced by lenders and other third parties, it does not require residential real estate loans with a value of less than \$250,000 to have an appraisal. Usually, these homes are evaluated and the HVCC legislation does not apply.

### *ACTIONS*

- Homebuyers that receive funds through HOME, CDBG, or other Commerce programs will be required to have a minimum of six hours of homebuyer education. This will help educate homebuyers on the purchase process, including the appraisal.
- The Division will have discussions with other agencies and organizations to brainstorm about action steps for predatory appraisal prevention and aid for low-income predatory appraisal victims.

**Lack of Spanish- and Hmong-speaking Lenders and Lenders of Color.** Obtaining a home mortgage can be complex for many Americans, especially those new to this country who are not comfortable speaking in English. Because non-English speaking persons seeking a mortgage often have to rely on their children or other family members to translate, errors and misunderstandings are more likely to occur throughout the process. Wisconsin Statute section 885.38 requires circuit courts to appoint spoken language interpreters at

public expense in any kind of case after a determination that the plaintiff or defendant has limited English proficiency.<sup>187</sup> The Division provides several key documents such as Wisconsin Relocation Rights Residential and the Rights of Landowners under Wisconsin Eminent Domain Law in Spanish and Hmong. The Division also is willing to accommodate document translation requests from grantees and other members of the public.

### **ACTIONS**

- The Division will promote the creation of informational documents that contain some language such as “if someone needs printed material interpreted in a different form, or if someone needs assistance in using Commerce services, please contact us,” and provide detailed contact information on the printed document.
- The Division will continue to provide documents in Hmong and Spanish both in print and on its website.

### **Lack of Flexible Underwriting to Accommodate Persons with No Credit History.**

Persons new to this country and many low-income Americans often do not establish credit or a relationship with a conventional financial institution. This makes it difficult for lenders to use conventional underwriting guidelines to give them a mortgage. There should be some flexibility in the industry for the special situations in which people do not have established credit histories, but qualify for a mortgage otherwise. WHEDA provides a list of community-based non-profit groups that specialize in pre- and post purchase homeowner education and credit counseling on their website in English by county. Some of these organizations such as Catholic Charities of Green Bay have a tool to change the website’s written language to one’s native language.

### **ACTIONS**

- The Division will work with WHEDA to translate their documents online that list providers of credit counseling services in Hmong and Spanish.

**Lending gap.** According to 2007 HMDA lending data, there is an emerging racial gap in Wisconsin. Hispanics and blacks obtained home refinance loans at rates less than their proportion in the state population. The Department of Workforce Development’s Equal Rights Division fields housing discrimination complaint data for the state of Wisconsin along with Metropolitan Milwaukee Fair Housing Council and HUD. Through the complaint and enforcement processes, these organizations are ensuring that all Wisconsin people receive fair loans with terms based on their credit history and income instead of the racial or ethnic characteristics of the applicant. Also, the Division funds the Home Homebuyer and Rehabilitation Program (HHR), which provides essential home purchase assistance and

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<sup>187</sup> “Courts required to appoint interpreters for non-English speakers,” Wisconsin Lawyer, Vol. 80, No. 12, December 2007. Available at [www.wisbar.org](http://www.wisbar.org). Accessed on September 21, 2009.

necessary home rehabilitation, and other vital improvements for dwelling units occupied by low- and moderate-income households.

#### **ACTIONS**

- The Division, through its HHR program, will place special emphasis on providing home purchase assistance funding to protected classes of low-income people.

### **Online Housing Market**

Craigslist, the source of the overwhelming majority of housing advertising in today's market, and the other Internet sites provide a convenient forum for illegal housing discrimination, according to the National Fair Housing Alliance. Under the current court decisions on cases involving housing discrimination in the online market, 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. Currently, Metropolitan Milwaukee Fair Housing Council (MMFHC) is addressing the housing discrimination complaints that occur in the online housing market.

#### **ACTIONS**

- The Division will continue to support, as funding permits, Metropolitan Milwaukee Fair Housing Council's efforts to advocate and enforce fair housing practices in the online market.

### **Discrimination in the Homeowner's Insurance Market**

Discrimination in the provision of homeowners insurance can take many forms. Although insurance companies agreed to modify their underwriting guidelines in order to maximize the ability of residents of predominately minority and racially integrated neighborhoods to procure comprehensive and affordable homeowners insurance products from lawsuits and HUD complaints, discrimination in this market still occurs, especially with those people who speak little or no English. The Office of the Commissioner's Insurance (OCI) ensures that the insurance industry responsibly and adequately meets the insurance needs of Wisconsin citizens. OCI leads the way in informing and protecting the public and responding to its insurance needs.<sup>188</sup>

#### **ACTIONS**

- The Division will distribute public information and consumer education pieces created by OCI to educate people about insurance when requested.

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<sup>188</sup> "About OCI," State of Wisconsin, Office of the Commissioner's Insurance, September 26, 2008, Available at <http://oci.wi.gov/aboutoci.htm>. Accessed on September 28, 2009.

- The Division will work with OCI to ensure that their services and educational materials are available to all people in various languages and formats.

## 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 WIFrontDoor Housing 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 properties owners receiving public subsidies to list them on the WIFrontDoor Housing website, which is a free service provided 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.

## 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*

- DHCD will conduct a needs assessment to identify which documents should be translated and into which languages. According to the 2005-2007 American Community Survey, the most commonly spoken languages at home after English in Wisconsin are Spanish and German, followed by Hmong. From this assessment the Division will begin converting documents beginning with the highest priority documents identified. The conversion of materials into other languages will increase awareness of housing resources and fair housing laws.
- Assess feasibility of converting Division website to Spanish/English/Hmong.

- Assess feasibility of creating a guide that lists organizations that are able to offer assistance in other languages. This will increase knowledge of resources to English as a Second Language speakers and allow services to be accessed easily.

## Other Actions

**Facilitate Participation in the Wisconsin Fair Housing Network.** The Division will work to encourage greater participation in the Wisconsin Fair Housing Network by state government agencies that work on fair housing issues. State agencies that should be included are Department of Financial Institutions, Equal Rights Division, Department of Health Services, Department of Regulation and Licensing, WHEDA, Department of Veterans Affairs, Department of Agriculture, Trade, and Consumer Protection, Department of Children and Families, and Department of Revenue.

**Conference Inclusion.** The Division shall encourage inclusion of sessions that discuss fair housing issues at affordable housing conferences supported by the Division. The DCHD information booth will have fair housing information available.

**Statewide Complaint Intake.** The Department has contracted with Metropolitan Milwaukee Fair Housing Council (MMFHC) to broaden complaint intake and investigation services.

**Fair Housing Education.** The Department has contracted with MMFHC to provide technical assistance, conduct workshops, and distribute materials on fair housing.

**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.

**WIFrontDoor Training Program.** DHCD will continue to promote WIFrontDoor at conferences and training sessions throughout the state.

**Request DRL to include Ongoing Fair Housing Education.** The Department of Regulation and Licensing (DRL) has continuing education requirements for real estate brokers and salespersons each biennium. The Department encourages DRL to consider inclusion of a fair housing section in the required continuing education.

**Wisconsin Fair Housing Network.** DHCD staff will remain active in the Wisconsin Fair Housing Network, including the statewide Fair Housing Poster and Essay Contest for K-12. DHCD staff serve as judges, coordinate the poster and essay contests, and facilitate award ceremonies at the state level.

DHCD also continues to co-sponsor an annual fair housing conference in conjunction with the Wisconsin Fair Housing Network.

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

**Resource Guide by Geographic Area.** Through WIFrontDoor, DHCD has been creating an on-line guide to housing resources by geographic area, The Housing Services Locator. The on-line guide includes non-profit agencies that offer help to individuals. Agencies need to sign up and complete a questionnaire to be included on the website. DHCD will continue to encourage more agencies to participate.

**On-Line Fair Housing Information.** The Division will provide fair housing information on the Division website and on the WIFrontDoor Housing website. In addition, the terms of agreement for WIFrontDoor Housing states that owners agree not to post any material to the site that violates any applicable local, state, national, or international law, including, but not limited to, The Fair Housing Act.

**Grantee Requirements.** The Division of Housing and Community Development will continue to require its grantees to address fair housing concerns. These include:

- DHCD will require HOME, CDBG, and other grantees to display a fair housing poster in a main area where it is likely to be seen. Posters are available at <http://www.civilrights.org/fairhousing/ads/>.

## Time Frame for Fair Housing Actions

TABLE 17 | TIME FRAME FOR ACTIONS

Consolidated Plan Program Year	Actions
Annually	<ul style="list-style-type: none"> <li>• publicize any new additions to Wisconsin’s Open Housing Law</li> <li>• new DHCD strategic initiatives give priority to communities implementing their comprehensive plan</li> <li>• monitor legislative changes that would affect local land-use planning with an impact on fair housing</li> <li>• be sensitive to housing projects that accommodate special needs of victims of domestic violence, dating violence and stalking in underserved non-entitlement jurisdictions of Wisconsin when administering programmatic funds</li> <li>• homebuyers that receive funds through HOME, CDBG, or other programs will be required to have a minimum of 6 hours of homebuyer education</li> <li>• maintain WI Front Door Housing website, which lists units for rent and includes the level of accessibility and the number of bedrooms</li> <li>• distribute public information and consumer education pieces created by OCI to educate people about insurance when requested</li> <li>• encourage all property owners receiving public subsidies to list them on the Wisconsin FrontDoor Housing website</li> <li>• encourage inclusion of sessions that discuss fair housing issues at affordable housing conferences supported by the Division</li> <li>• publicize the phone numbers and websites of HUD, DWD, and Metropolitan Milwaukee Fair Housing Council, or where one can file a fair housing complaint</li> <li>• participate in WHEDA’s public comment period of the draft of the next year’s QAP to ensure that the needs of protected classes are met in affordable housing projects</li> <li>• distribute resources to grantees for victims of domestic violence, dating violence, and stalking provided by the Office of Justice Assistance (OJA)</li> <li>• participate in Wisconsin Fair Housing Network</li> <li>• review and complete housing impact statements</li> <li>• provide fair housing information on the Division website and on WI FrontDoor Housing website</li> <li>• continue to promote Wisconsin FrontDoor at conferences and training sessions throughout the state</li> <li>• analyze housing discrimination complaint data from HUD and DWD when available</li> </ul>

Consolidated Plan Program Year	Actions
April 2010 - March 2011	<ul style="list-style-type: none"> <li>• support the Equal Rights Division if they request substantial equivalency</li> <li>• revise Division fair housing information to reflect revisions to Wisconsin's Open Housing Law if any new changes are made</li> <li>• publicize the administrative code amendments to DFI-bkg 80.85 that expand the bases of discrimination in consumer lending</li> <li>• assess options to provide more housing choices to people with mobility impairments</li> <li>• complete needs assessment for language translation of Division documents</li> <li>• provide funding to MMFHC which expands testing activities, complaint intake, technical assistance, workshops, and fair housing material distribution throughout the state</li> <li>• encourage increased participation in the Wisconsin Fair Housing Network by state government agencies</li> <li>• alert governor and legislators on committees related to housing of legislative barriers to fair housing found in the Fair Housing Plan</li> <li>• request DRL to include ongoing fair housing education</li> <li>• explore options for partnering with organizations to create guide on Fair Housing laws targeted at landlords</li> <li>• encourage greater agency sign-up on WI FrontDoor</li> </ul>
April 2011 - March 2012	<ul style="list-style-type: none"> <li>• have discussions with other agencies and organizations to brainstorm about action steps for predatory appraisal prevention and aid for predatory appraisal victims</li> <li>• assess feasibility of creating a Spanish/English/Hmong Commerce website</li> <li>• assess feasibility of creating a guide that lists organizations that are able to offer assistance in other languages</li> <li>• assess feasibility of having a fair housing public service campaign</li> <li>• begin distribution of landlord guide to fair housing laws</li> <li>• complete document translation according to needs assessment</li> <li>• report on CRF activities in the CAPER</li> <li>• homes built with HOME Single-Family funds will have first floor visitability</li> <li>• require HOME, CDBG, and other program grantees to display a fair housing poster</li> </ul>
April 2012 - March 2013	<ul style="list-style-type: none"> <li>• begin website conversion to Spanish/English/Hmong if found to be feasible</li> <li>• report on CRF activities in the CAPER</li> <li>• homes built with HOME Single-Family funds will have first floor visitability</li> <li>• require HOME, CDBG, and other grantees to display a fair housing poster</li> </ul>
April 2013 - March 2014	<ul style="list-style-type: none"> <li>• report on CRF activities in the CAPER</li> <li>• homes built with HOME Single-Family funds will have first floor visitability</li> <li>• require HOME, CDBG, and HODAP grantees to display a fair housing poster</li> </ul>

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