

**PRRAC**

*Poverty & Race  
Research Action Council*

Program Review

# Is the HOME Program Affirmatively Furthering Fair Housing?



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September 2014

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# EXECUTIVE SUMMARY

**T**he HOME Investment Partnership Program was created in 1990 following findings from Congress that the United States “has not made adequate progress towards the national housing policy goal [...] which would provide decent, safe, sanitary, and affordable living environments for all Americans.”<sup>1</sup> The HOME program became one of the four block grant programs administered by the U.S. Department of Housing and Urban Development (HUD).<sup>2</sup> HOME is distinguished from the four other major block grant programs by its primary focus on homeownership assistance and affordable rental housing development. However, as with other affordable housing development programs, siting of affordable HOME units – particularly low-income family rental housing – has the potential to concentrate low-income housing units in low-opportunity neighborhoods, restricting housing choices and promoting housing segregation. This review attempts to explore the question of whether the HOME program, as currently administered, is achieving HUD’s fair housing goals.

Although the HOME program is one of the largest affordable housing programs with an annual appropriation of \$1 billion to \$1.5 billion, siting and occupancy of these HOME funded units has rarely come into the spotlight.<sup>3</sup> This report takes up a part of this challenge and attempts to review the program’s record, not just in providing housing but also in expanding quality housing opportunities to the low-income families it serves.

One basic way of assessing the fair housing impact of a low-income housing program is to compare project locations with the race and poverty demographics of the neighbor-

hood the development is located in. This is the basis for the HUD site and neighborhood standards, a version of which is applied to the HOME program. Using this approach, we can assess the locations of HOME low-income rental units (see Section – below), and the program appears, like other HUD programs, to be concentrating poverty and perpetuating segregation. A national analysis of the locations of HOME rental units shows that HOME units are disproportionately segregated by race and poverty when compared to total occupied housing units and renter occupied units. However, the available national HOME data leaves a number of questions unanswered: Which home rental units are designated for elderly vs. family housing? Which units are new rental housing vs. moderate rehabilitation – and what other housing subsidies are being combined in particular buildings? Finally, what is the racial, ethnic, and income status of families living in particular developments? Because of the extreme localism and local flexibility built into the program (particularly the local option to select a priority for homeownership vs. low-income rental housing), the answers to the questions will vary from jurisdiction to jurisdiction. And unlike all other HUD programs, there is no centralized collection of occupancy data by race, ethnicity, income, etc. We urge HUD to improve their data collection strategies so that researchers and practitioners focusing on civil rights can thoroughly evaluate programs like HOME.

Because the HOME program’s data is difficult to systematically analyze we have begun the process of analyzing HOME program administration in this report by selecting three metropolitan areas that we are familiar with through our prior work: Milwaukee, Hartford, and Baltimore. For these metro

- 1 42 U.S.C. § 12721. The national housing policy goal was originally outlined in the Housing Act of 1949 and reiterated in the Housing and Urban Development Act of 1968.
- 2 24 C.F.R. § 91.2(a) et. seq. (state the remaining three block grant programs covered by the consolidated plan are the Community Development Block Grant (CDBG) program, the Housing for People with Aids (HOPWA) program, and the Emergency Shelter Grant (ESG) program). These block grant programs are administered at HUD by the Office of Community Planning and Development, and funds flow to eligible states, cities, counties, and towns. Funds allocated to Public Housing Agencies (PHAs) are administered by a separate division at HUD, the Office of Public and Indian Housing.
- 3 24 CFR § 91 & 92, *available at* <https://federalregister.gov/a/2013-17348>.

areas, we studied and compared reports and data across several local participating jurisdictions and their associated Metropolitan Statistical Areas (MSA). We used available reports on HOME and complemented them with demographic and other administrative data to explore this issue. Particularly we look at the latest available Consolidated Plan, the Analysis of Impediments, the Consolidated Annual Performance and Evaluation Report, and the Annual Action Plan of each participating jurisdiction and their MSA. The specific areas we reviewed included: Milwaukee, WI; the Milwaukee MSA; Hartford, CT; the Hartford MSA; Baltimore City, MD; and the Baltimore MSA. It is important to realize that due to the flexible nature of the HOME program, each Participating Jurisdiction (PJ) reserves the right to implement the program according to their respective affordable housing needs within certain HUD-defined parameters. Therefore, the planned use of HOME funds may be different from PJ to PJ. The goal of this report is to study and compare how these sample participating jurisdictions implement HOME. In particular, we wanted to explore local jurisdictions' strategies to "affirmatively further fair housing", as HUD grantees are required to do under the Fair Housing Act.<sup>4</sup>

## Highlights of our Study

Although our study areas each had their unique set of affordable housing problems, they also shared a number of important common issues relating to the implementation of the HOME program. The three cities we looked at had highly segregated urban centers with a large number of extreme poverty neighborhoods. They also received the largest share of HOME funding in their respective metro regions and had a corresponding high concentration of HOME multi-family rental units. In contrast, the rest of the area in the MSA outside the city had a large number of low poverty areas and a thin distribution of HOME multi-family rental units.

- ❖ When analyzing Milwaukee we found that HOME rental units were clustered in two sections of the city. Milwaukee has 898 HOME rental units and 81% of these units are located in census tracts with over 20% of families living below poverty and over 50% minority population. The HOME units of the other two PJs (Waukesha

Consortia and Milwaukee County Consortia) are also clustered, but they also have significantly fewer units. In fact only 9% of HOME units in the MSA are located in the Waukesha Consortia and Milwaukee County Consortia. One reason given for the lack of HOME units is that local municipalities have zoning and land use laws that prevent the development of affordable housing.

- ❖ In Hartford, we discovered that 98% of HOME rental units are located in census tracts that are over 50% minority. Moreover, 90% of HOME rental units in Hartford are located in census tracts with over 20% of families living below poverty and over 50% minority population. In the consolidated plan, Hartford has prioritized homeownership over the construction of affordable rental units. However, there is still a need for affordable rental housing and Hartford should take steps to site affordable housing outside low-opportunity census tracts and on a regional basis.

The Hartford MSA has a total of 115 HOME rental units and 83% of these units are located in a PJ. Almost 52% of HOME units in the MSA are concentrated in Hartford where 75% of the census tracts have 20% or more families living under the federal poverty level. Excluding Hartford and New Britain, there are few HOME units in the MSA. The state of Connecticut distributes a portion of its HOME funds to local PJs, like Hartford and New Britain, which have already received funds directly from HUD. This type of double distribution has led to a concentration of HOME units in areas of poverty, rather than a more regional approach to HOME development.

- ❖ In the city of Baltimore, almost 93% of the total 123 HOME rental projects are in tracts with greater than 50% minority. Nearly 64% of HOME rental projects are in areas that are both higher in minority concentration and poverty. Baltimore acknowledges that residential segregation is an ongoing challenge for the city but unlikely to be solved because of the high racial and ethnic concentration in a majority of their census tracts.

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4 42 U.S.C § 3608.



Recognizing the concentrated nature of these HOME assisted rental programs in low-opportunity neighborhoods is the first step towards finding solutions to de-concentrate them.

When we compared Baltimore city to the larger metro region, we found that 45% of the HOME rental units in the Baltimore MSA are located in Baltimore. However, most of the family HOME rental units outside of the city were located in poorer census tracts (excluding Baltimore city, the MSA contains 483 census tracts and only 6 of these census tracts have 20 % or more families living below poverty). Baltimore's Regional Analysis of Impediments found that HOME units located in "areas of opportunity" were typically housing for seniors or disabled individuals.<sup>5</sup>

Ironically, at the same time that HUD is urging local jurisdictions to promote fair housing, its own program rules requiring that PJs use HOME funds within their jurisdiction help to cause the clustering of HOME unit and the siting of HOME units in low-opportunity areas. The HOME regulations require PJs to "...invest [their] HOME funds in eligible projects within [their] boundaries, or in joint projects within the boundaries of contiguous local jurisdictions [that] serve residents from both jurisdictions."<sup>6</sup> As a result of this rule and little to no collaboration, the PJs of Milwaukee, Hartford and Baltimore all have a substantial majority of their HOME multi-family units located in census tracts with over 20% families living below poverty and over 50% minority populations.

We have identified areas where the implementation of the program can be improved to ensure that HOME is placing low-income families in high opportunity neighborhoods.<sup>7</sup> Among these are:

### 1. Change the allocation formula used to select Participating Jurisdictions

The HOME program allocation formula as it stands is weighted heavily on measures of poverty and need. As a

result, greater HOME dollars are awarded to the participating jurisdictions that demonstrate the highest need. As our study shows, the cities generally receive the highest percentage of HOME funds in their metropolitan area. The HOME formula allocation in combination with a regulation that funds should be used within the boundaries of the PJ becomes problematic to cities that have a high proportion of poor and segregated neighborhoods. Siting HOME projects in opportunity neighborhoods becomes increasingly challenging for these highly segregated poor cities, and deprives low-income city families of housing options in less segregated communities. The formula should be altered in a way that reflects the opportunities in the city as well as the region, and gives families with the greatest need access to housing in a wider range of neighborhoods.

### 2. Stronger emphasis on regional siting of HOME units

PJs rarely have joint projects outside their boundaries. To provide more housing choices for low-income families, HUD should encourage PJs to form consortia or develop joint projects with surrounding jurisdictions. Furthermore, as recommended in the new Affirmatively Furthering Fair Housing (AFFH) proposed rule, HUD should promote regional Assessments of Fair Housing (AFH) to encourage programs like HOME to be administered on a regional basis.

### 3. PJs should have mechanisms to ensure that HOME projects are affirmatively furthering fair housing.

While the HOME site and neighborhood standards<sup>8</sup> require PJs to "... promote greater choice of housing opportunities", our review found that most HOME units are clustered and do not provide real choice for potential renters. In order to ensure there is choice in the location of HOME rental units for families, HUD should strengthen enforcement of the program's siting rules.

5 Unfortunately, personal jurisdictions are not required by HUD to distinguish between HOME family vs elderly development.

6 24 C.F.R. § 92.201(a)(2).

7 High opportunity neighborhoods are defined as neighborhoods with low poverty and minority concentration, access to transportation, and high performing schools.

8 24 C.F.R. § 92.202(a).

#### 4. Require more consistent CAPER reporting that includes occupancy (elderly vs. family), income, family size, race and ethnicity

The PJs are required to submit their consolidated performance review (CAPER) annually to HUD. During our review, we found that the CAPER reports were inconsistent, preventing us from conducting a deeper comparative. Many CAPERs had incomplete information on the type of population assisted and no information on the location of the projects completed. Specifically, CAPERs failed to give consistent reporting on whether the HOME assisted units were for elderly residents or open to all tenants (including families), and there was no disaggregated information on race/ethnicity of the population served. Data on the location of the units was almost non-existent. We recommend that HUD enforce stricter civil rights reporting requirements for HOME grantees so that researchers and planners can discern whether the PJ is affirmatively furthering fair housing with its location and tenure type decision. One obvious way to assess whether the HOME program is providing greater location choices to families is by using maps.

In addition to improving the CAPER system, HUD should integrate HOME occupancy data into its “Picture of

Subsidized Households” database, which currently includes occupancy data for every HUD assisted housing program except HOME.

#### 5. Ensure that the new AFFH Rule is integrated with the Consolidated Plan and there are specific performance goals

Currently, PJs are required to have an Analysis of Impediments (AI) to fair housing choice, among other actions, to certify that they are affirmatively furthering fair housing. Similar to the CAPER reporting, our review finds that AIs may have insufficient information or may be outdated to allow any substantive analysis. In some instances, the AI’s recommendations were not incorporated in the consolidated plan. The proposed AFFH seeks to tie the new AFFH more directly to the consolidated plan and provide grantees with current and accurate data for analysis.

In the report below, we will explore each of these issues in greater depth, as applied to three highly segregated metropolitan areas. We hope that this analysis will help to promote a discussion of needed fair housing improvements in the HOME program.

## ACRONYMS

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ACS	American Community Survey	FHEO	Fair Housing and Equal Opportunity
AFFH	Affirmatively Furthering Fair Housing	FMR	Fair Market Rent
AFH	Assessment of Fair Housing	HUD	U.S. Department of Housing and Urban Development
AI	Analysis of Impediments	IDIS	Integrated Disbursement and Information System
AMI	Area Median Income	MSA	Metropolitan Statistical Area
CAPER	Consolidated Annual Performance and Evaluation Report	NAHA	National Affordable Housing Act
CHDO	Community Housing Development Organization	PJ	Participating Jurisdiction
ConPlan	Consolidated Plan	TBRA	Tenant Based Rental Assistance
CPD	Office of Community Planning and Development		

# CHAPTER I

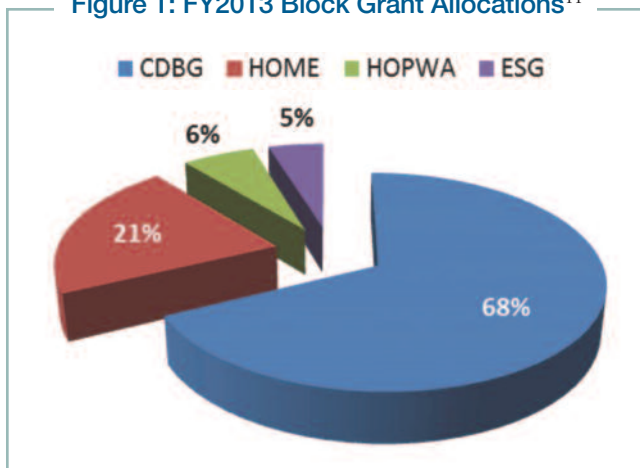
## Introduction

The HOME Investment Partnership Program is one of the four entitlement programs to states and local governments administered by the U.S. Department of Housing and Urban Development (HUD).<sup>9</sup> Figure 1 shows FY2013 block grant allocations; HOME is the second largest block grant program with allocations of about \$1 billion.<sup>10</sup> As a HUD program, HOME, along with all HUD programs, and HUD grantees, is required to “Affirmatively Further Fair Housing” (AFFH). The obligation to AFFH comes from section 3608 of the Fair Housing Act which cre-

ates a legal requirement to avoid the perpetuation of segregation and take steps to promote racial integration.<sup>12</sup>

The primary goal of the HOME Program is to assist eligible states and local governments in expanding the supply of decent and affordable housing for very low-income and low-income families, with a particular focus on rental housing.<sup>13</sup> There are different income targets for homeownership and tenant based rental assistance within the HOME program. Each HOME investment must serve individuals or families who are at or below 60% of area median income.<sup>14</sup> Furthermore, HOME is designed to give localities flexibility and discretion to design and implement affordable housing strategies customized to the localities’ unique contexts, challenges, and priorities.<sup>15</sup> Another characteristic feature of HOME is that it encourages, and in some cases requires, partnerships among different levels of government, the non-profit community housing development organizations (CHDOs), and for-profit groups.<sup>16</sup> Additionally, the program is designed to leverage federal HOME dollars by requiring grantees to match at least 25% of the HOME funds with other non-federal resources.<sup>17</sup> As will be discussed below, each of these program features (flexibility, partnerships, and leveraging) has the potential to undermine fair housing goals.

Figure 1: FY2013 Block Grant Allocations<sup>11</sup>



9 The HOME Investment Partnership Program was authorized in 1990 by Title II of the Cranston-Gonzalez National Affordable Housing Act, or NAHA (codified at 42 U.S.C. § 12701). 24 C.F.R. § 91.2(a). et. seq. (the other block grant programs covered by the Consolidated Plan are the Community Development Block Grant (CDBG) program, the Housing for People with Aids (HOPWA) program, and the Emergency Shelter Grant (ESG) program). The HOME Investment Partnership Program referred to as “HOME” or the “HOME program” throughout the document.

10 CDBG received \$3,077,600,121 in FY 2013 allocations, HOME received \$964,565,724, HOPWA received \$283,170,967 and ESG received \$215,000,000.

11 Figure 1 created by PRRAC. FY2013 Block Grant Allocations available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/budget/budget13](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/budget/budget13).

12 Fair Housing Act, 42 U.S.C. §3608.

13 24 C.F.R. § 92.1.

14 24 C.F.R. § 92.216 available at <https://federalregister.gov/a/2013-17348>.

15 *Id.* at § 92.209.

16 *Id.*

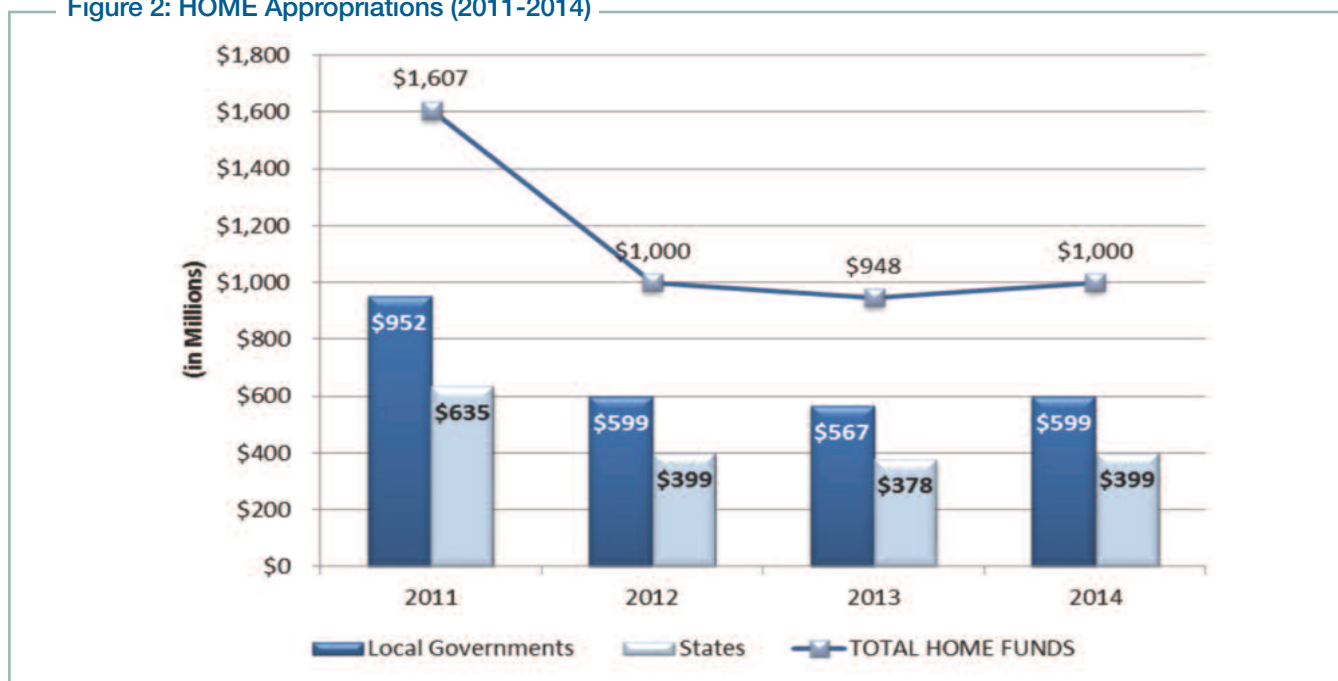
17 24 C.F.R. § 92.218(a) & 92.220(a).

Like the other HUD sponsored formula block grant programs, HOME provides funding directly to states and eligible local participating jurisdictions.<sup>18</sup> In cases where a local jurisdiction does not meet the eligibility rules, geographically contiguous local governments can form a consortium to receive HOME funding.<sup>19</sup> States receive 40% of total HOME funds and the remaining 60% is distributed to local jurisdictions or consortia.<sup>20</sup> The HOME Program distributes approximately \$1 to \$1.5 billion annually, dipping below \$1 billion in 2013 as shown in Figure 2.<sup>21</sup> Between 2011 and 2014 HOME funds decreased approximately 38%, or from

\$1.6 billion to about \$1 billion.<sup>22</sup> However, there was about 6% increase in funding from 2013 to 2014.

HOME funds are allocated by a formula set by HUD. As previously mentioned, states receive 40% of HOME funds and the remaining 60% are allocated to “general units of local government”.<sup>23</sup> The formula that determines the allocation is made up of six factors, each with a strong focus on poverty and need. States receive the greater of \$3,000,000 or their formula allocation.<sup>24</sup> Typically general units of local government are characterized as PJs once they receive a formula allocation of \$750,000.<sup>25</sup> Once participating

Figure 2: HOME Appropriations (2011-2014)



18 24 C.F.R. § 92.50 (A local jurisdiction can become a participating jurisdiction if it is a metropolitan city or an urban county as of the end of the fiscal year).

19 24 C.F.R. § 92.101.

20 24 C.F.R. § 92.50. HUD establishes a line of credit to all States and local participating jurisdictions every year (42 U.S.C § 12748). States may either allocate their HOME funds to other local entities or use the funds to carry out the activities themselves. *See also* 24 C.F.R. § 92.201(b).

21 24 CFR § 91 & 92, available at <https://federalregister.gov/a/2013-17348>.

22 U.S. Dept. of Housing and Urban Development, CPD Appropriations Budget, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/budget#totalcpd](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/budget#totalcpd) (these totals include HOME set asides). Note that the graph does not show HOME set asides which includes funds for technical assistance to CHDOs, insular areas, transformation initiative, and housing counseling.

23 24 C.F.R. § 92.50(a) (general units of local government are defined in the regulation as "... a city, town, township, county, parish, village, or other general purpose political subdivision of a State; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101").

24 24 C.F.R. § 92.50(c) (the six factors include: vacancy adjusted rental units where the head of household is at or below poverty; occupied rental units with at least one of four problems [overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rental costs]; rental units build before 1950 occupied by poor households; occupied rental units with at least one of four problems multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national costs; number of families below the poverty line; and population of a jurisdiction multiplied by net per capita income).

25 24 C.F.R. § 92.102(a). *See* 24 C.F.R. § 92.102(b) (In some circumstances general units of local government that receive a formula allocation of less than \$750,000 can be considered a PJ). *See* 24 C.F.R. § 92.102(c) (In fiscal years where less than one billion is allocated to HOME \$500,000 is substituted for \$750,000). *See* 24 C.F.R. § 92.50(d)(3) (In fiscal years in which Congress appropriates less than \$1.5 billion of HOME funds, \$335,000 is substituted for \$500,000).

jurisdiction status is awarded it remains until HUD revokes it.<sup>26</sup>

Jurisdictions that do not receive at least a \$500,000 formula allocation may form a consortium with contiguous jurisdictions.<sup>27</sup> A HOME consortium must consist of “geographically contiguous units of general local government.”<sup>28</sup> Currently, there are 142 approved consortia PJs.<sup>29</sup> Forming a consortia PJ provides an opportunity for regional planning and siting of HOME units in a way that affirmatively furthers fair housing. The new HOME rule also states that HUD may require a PJ to form a consortium when the PJ fails to meet the HOME requirements.<sup>30</sup>

## The ConPlan and the AI

States and local participating jurisdictions must submit a Consolidated Plan that is approved by HUD in order to receive annual allocations from HUD under the four formula block grant programs including HOME.<sup>31</sup> A Consolidated Plan (the “ConPlan”) is a 3- to 5-year roadmap, prepared through dialogues with the public and private agencies involved in providing various social services, for carrying out, monitoring, and managing the HUD pro-

grams.<sup>32</sup> The ConPlan outlines the needs and priorities of a jurisdiction with an analysis of its housing market condition.<sup>33</sup> In its ConPlan, the participating jurisdiction must also certify that it will affirmatively further fair housing.<sup>34</sup> To achieve this fair housing goal, the participating jurisdiction must develop an “Analysis of Impediments to Fair Housing Choice” or the “AI,” implement strategies to overcome the impediments identified in the AI, and keep records of the actions taken and its impacts.<sup>35</sup> There is no set requirement guiding how often the AI needs to be updated. However, HUD suggests that the AI should be completed every 3- to 5 year aligning it with the creation of the Consolidated Plan of the jurisdiction.<sup>36</sup> Even though the AI does not need to be submitted to HUD, the PJs are required to have an AI on hand with records that detail the steps that have been taken to solve the impediments to achieve fair housing.<sup>37</sup> The participating jurisdictions are required to report records of actions to overcome impediments to fair housing annually to HUD in a report titled “Comprehensive Annual Performance and Evaluation Report” (CAPER).<sup>38</sup>

Civil rights advocates, HUD staff, and the Government Accountability Office (GAO), among other housing practi-

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- 26 24 C.F.R. § 92.107 (status can be revoked if a PJ is not meeting its requirements or if its funding allocation falls below \$750,000 for three consecutive years).
- 27 24 C.F.R. § 92.101(a).
- 28 24 C.F.R. § 92.101(a).
- 29 For a complete list of current consortia see U.S. Dept. of Housing and Urban Development, FY 2014 HOME Consortia Participating Members Percentage Report, available at <https://onecpd.info/resource/2407/current-federal-fiscal-year-home-consortia-list/>.
- 30 24 C.F.R. § 92.551.
- 31 24 C.F.R. § 92.150.
- 32 U.S. Dept. of Housing and Urban Development, Consolidated Planning, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/conplan](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/conplan). See also 24 C.F.R. § 91.1(b).
- 33 U.S. Dept. of Housing and Urban Development, Consolidated Planning, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/conplan](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/conplan).
- 34 U.S. Dept. of Housing and Urban Development, Fair Housing for HOME program participants: Affirmatively Furthering Fair Housing at 2, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/library/modelguides/2005/200510](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/library/modelguides/2005/200510).
- 35 *Id.* at 1. See 24 C.F.R. § 91.325. Also “The AI (is) a comprehensive review of a state’s or entitlement jurisdiction’s laws, regulations and administrative policies, procedures and practices. The AI involves an assessment of how these laws, regulations, policies and procedures affect the location, availability, and accessibility of housing, and how conditions, both private and public, affect fair housing choice” See Bregon, Nelson R. Memo to all CPD field office directors, all FHEO HUB directors, all FHEO program center directors, all FHEO lead equal opportunity specialists, Department of Housing and Urban Development, Washington, DC. at 2 (Sept. 2004), available at <http://www.hud.gov/offices/fheo/library/finaljointletter.pdf>.
- 36 U.S. Dept. of Housing and Urban Development, Fair Housing Planning Guide, available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.
- 37 Dept. of Housing and Urban Development, Fair Housing for HOME program participants: Affirmatively Furthering Fair Housing, *supra* note 34.
- 38 *Id.* See CPD’s Guide for Consolidated Plan Performance Report Narratives, available at <http://www.hud.gov/offices/cpd/about/conplan/toolsandguidance>. According to this model, PJs must, among other things, describe actions that they have taken to affirmatively further fair housing and evaluate their progress towards meeting HOME objectives by reviewing the use of HOME funds and the number and tenure type of HOME-assisted households. Beyond this, PJs are asked to present IDIS data in supplementary reports that summarize program performance indicators such as annual activity counts and disbursements, the income categories of HOME-assisted households, and the number of new HOME units that fall under each affordable housing objective.



tioners, have raised concern over the ineffectiveness of current guidance in helping the HUD program grantees fulfill the requirements of the Fair Housing Act.<sup>39</sup> A recent GAO report examined AIs from different jurisdictions and found that many AIs were out-of-date, often incomplete, and rarely included the elements suggested by HUD to further fair housing.<sup>40</sup> The GAO report claims that HUD's lack of oversight and requirements "may explain why many AIs are outdated and have other weaknesses."<sup>41</sup> In response to these concerns, HUD proposed a new Affirmatively Furthering Fair Housing (AFFH) rule in July 2013.<sup>42</sup> The new proposed AFFH rule is designed to tackle most of these issues and "refine" the processes in which HUD program participants can meet their fair housing goals. The proposed AFFH rule replaces the previous AI with a "streamlined" fair housing assessment tool called the "Assessment of Fair Housing" (AFH). The new AFFH rule also directs HUD to provide nationally uniform data to HUD grantees so that the grantees can assess their challenges and barriers in achieving their fair housing goals. The proposed rule has improved guidelines and evaluation measures for the new AFH. Also, in response to the GAO report, the proposed rule aims to ensure that the AFH is completed prior to the Consolidated Plan so that the Consolidated Plan of each jurisdiction will include the findings of the AFH. Lastly, HUD plans to have clear evaluation standards that promote affirmatively furthering fair housing among program participants. HUD hopes that the proposed rule will provide HUD program participants with better direction on how to meet their goal of affirmatively furthering fair housing.

The proposed changes in AFFH rule are anticipated to impact the way HOME program participants meet their fair housing requirements. The degree of impact, however, will not be known until the new AFFH (not yet released) takes effect.

As our report will demonstrate later, the formula used by HUD to select PJs and allocate HOME funds results in HOME funds being allocated to cities that have high levels of poverty. Without an intervention like joint projects and inter-jurisdiction collaboration, this type of urban-centered policy will continue to result in HOME units being disproportionately placed in urban areas that have very few high opportunity neighborhoods.

## General HOME program and project requirements

HOME is guided by a set of program and project requirements to meet its goal of expanding affordable housing for those in need. In addition to the fair housing requirements discussed above, HOME grants must conform to program rules on: (a) Income targeting, (b) Partnering with Community Housing Development Organizations (CHDOs), (c) Affordability requirement, (d) Site and neighborhood standards, and (e) Matching contribution requirement.

### a) Income Targeting

All HOME funds must go to projects that expand affordable housing for families that are low-income or very-low-income.<sup>43</sup> In terms of tenant based rental assistance and rental units, 90% of funding must go to families with annual income at or below 60% the area median income.<sup>44</sup> All of the HOME funds used for homeownership activities are required to be used for units that will be occupied by low-income families, or families that have annual incomes less than 80% of the area median income.<sup>45</sup> However, there are no requirements specifying the mix of HOME homeownership vs. rental assistance within a jurisdiction.

39 U.S. Dept. of Housing and Urban Development, Affirmatively Furthering Fair Housing, 78 Fed. Reg 43710 (July 19, 2013) (AFFH Proposed rule) *available at* [http://www.huduser.org/portal/affht\\_pt.html#affhrule-tab](http://www.huduser.org/portal/affht_pt.html#affhrule-tab).

40 Government Accountability Office, HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans, GAO-10-905, Sep 14, 2010 *available at* <http://www.gao.gov/products/GAO-10-905>.

41 *Id.*

42 U.S. Dept. of Housing and Urban Development, Affirmatively Furthering Fair Housing, 78 Fed. Reg 43710 (July 19, 2013) (AFFH Proposed rule) *available at* [http://www.huduser.org/portal/affht\\_pt.html#affhrule-tab](http://www.huduser.org/portal/affht_pt.html#affhrule-tab).

43 24 C.F.R. § 92.1. *See also* 24 C.F.R. § 92.2 (where "low-income families", as defined by HUD, are families who do not have annual income more than 80% of the area median income while adjusting for family size and "very low-income" is defined as families who do not have annual income greater than 50% of the median income for that area.).

44 24 C.F.R. § 92.216(a).

45 24 C.F.R. § 92.217.

## b) Partnering with Community Housing Development Organizations (CHDOs)

State and local participating jurisdictions are required to set aside a minimum of 15% of funding for initiatives by CHDOs.<sup>46</sup> As defined by HUD, a CHDO is a non-profit private organization that provides “decent housing that is affordable to low-income and moderate-income persons.”<sup>47</sup> Additionally, at least one-third of the CHDO’s board members should be individuals from a low-income community, a low-income neighborhood, or be an elected member of a low-income organization.<sup>48</sup> The CHDO may be involved in developing, sponsoring or owning the affordable housing units.<sup>49</sup> Participating jurisdictions are encouraged to make a “reasonable effort” in identifying local CHDOs who have the capacity to take on HOME eligible projects.<sup>50</sup> Participating jurisdictions are required to “...invest [their] HOME funds in eligible projects within [their] boundaries, or in joint projects within the boundaries of contiguous local jurisdictions [that] serve residents from both jurisdictions.”<sup>51</sup> Because of this rule, CHDOs receiving money from PJs must use those funds on projects within the PJs jurisdiction or partner with a bordering jurisdiction on a project. The new HOME regulations require that both jurisdictions participating in a joint project make a financial contribution to the project.<sup>52</sup>

## c) Affordability requirement

The rental rates of HOME rental projects must adhere to the affordability requirements as set forth by the HOME rule.<sup>53</sup> The maximum rent in the HOME funded projects is the lesser of 30% of the income of a family earning 65% of the area median income, or the local Fair Market Rent

(FMR). For projects with five or more rental units, where 20% is set aside for very low-income families, the rents for units must not be more than 30% of an annual income of a family earning 50% of the area median income or 30% of their monthly gross adjusted income.

The HOME program also requires that HOME projects remain affordable for a set period of time to ensure the length of affordability.<sup>54</sup> For HOME funded rental units, the duration of the affordability period is dependent upon the amount of funding used and the nature of project.<sup>55</sup> Rehabilitation or acquisition of existing rental housing must remain affordable from five to fifteen years depending upon the amount of HOME funding invested in it.<sup>56</sup> Refinancing and new construction of rental housing must remain affordable for fifteen and twenty years respectively.<sup>57</sup> For home-buyer projects, the affordability period ranging from five to fifteen years is based on the amount of HOME funds used.<sup>58</sup>

## d) Site and neighborhood standards

State and local participating jurisdictions are required to abide by the “site and neighborhood standards” while administering their HOME program.<sup>59</sup> The general site and neighborhood standards for HOME require that:

A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provision of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d – 2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq., E.O. 11063 (3 CFR, 1959-1963 Comp., p. 652)),

46 24 C.F.R. § 92.300(b).

47 24 C.F.R. § 92.2.

48 *Id.*

49 24 C.F.R. § 92.300(a).

50 24 C.F.R. § 92.300(b). Additionally, if a PJ is unable to identify an ample number of CHDOs within 24 months of its participation to invest the 15% set-aside, then it may spend 20% (not more than \$150,000) of the minimum 15 to develop the capacity the CHDO in that jurisdiction.

51 24 C.F.R. § 92.201(a)(2).

52 24 C.F.R. § 92.201(a)(2). This local contribution requirement may undermine fair housing goals by giving the neighboring jurisdiction a “pocket veto”.

53 24 C.F.R. § 92.252(a).

54 U.S. Dept. of Housing and Urban Development. HOME Affordability *available at* [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/training/web/abc/provisions/affordability](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/abc/provisions/affordability)

55 *Id.*

56 24 C.F.R. § 92.252(e).

57 *Id.*

58 24 C.F.R. § 92.254(a)(4).

59 24 C.F.R. § 92.202(a).

and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.<sup>60</sup>

There is also a specific HOME site and neighborhood standard that apply to new rental housing which requires:

The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.<sup>61</sup>

Section (e)(3), referred to above, provides that a project can be located in an area with a high minority concentration if “sufficient comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration” or “the project is necessary to meet overriding housing needs that cannot be met in that housing market area.”<sup>62</sup>

When considering where to site HOME funded homeownership (or rental) units, HUD also directs PJs to consider “...[the sites proximity to] social, recreation, educational, commercial and health facilities and services...equivalent to those more typically found in neighborhoods consisting largely of unassisted [families]...”<sup>63</sup>

Appendix E is a HUD example of an assessment PJs should conduct before developing new rental housing. In spite of these rules, it is clear from looking at the cities and MSAs chosen for our case studies that there is an abundance of clustering of multi-family rental properties funded in whole

or in part with HOME funds in areas of high minority and poverty concentrations.

### e) Matching contribution requirement

As mentioned earlier, each participating state and local jurisdictions are required to make matching contributions to the affordable housing initiative under HOME. The PJs should match 25% of the total HOME funds they receive from HUD through non-federal resources (this can be done through infrastructure investments, other grant funds, etc.).<sup>64</sup> HUD may consider reducing the matching amount up to 100% on a case by case basis when a participating jurisdiction, state or local, is in “fiscal distress” or when a PJ has suffered from a major disaster.<sup>65</sup>

Where local housing developers are seeking funds directly from the state’s HOME allotment, the HOME matching requirement could make it more difficult to develop rental housing in jurisdictions that do not wish to “contribute.”<sup>66</sup>

*Where local housing developers are seeking funds directly from the state’s HOME allotment, the HOME matching requirement could make it more difficult to develop rental housing in jurisdictions that do not wish to “contribute.”*

### Eligible Uses of HOME Funds

Once the Consolidated Plans are accepted and HOME funds are made available to participating jurisdictions, the PJs can use the funding for a variety of activities related to the creation and maintenance of affordable housing. As illustrated in Figure 3, the eligible activities under HOME provide a wide range of assistance to renters, future homeowners, and homebuyers. The assistance may be in the form of acquisition, new construction, site improvements, real state property acquisition, rehabilitation, demolition, and conversion to expand affordable housing.<sup>67</sup> HOME is often used in combination with Low-Income Housing Tax Credits

60 24 C.F.R. § 92.202(b).

61 24 C.F.R. § 983.57(e)(2) &(3).

62 24 C.F.R. § 983.57(e)(3).

63 U.S. Dept. of Housing and Urban Development, Fair Housing for HOME Participants, available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/library/modelguides/2005/200510](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/library/modelguides/2005/200510). See also 24 C.F.R. §983.57(e)(6).

64 24 C.F.R. §§ 92.218(a) & 92.220(a).

65 24 C.F.R. §§ 92.222(a).

66 Baltimore Regional Housing Campaign v. State of Maryland and Raymond A. Skinner, Secretary of the Department of Housing and Community Development of the State of Maryland, HUD Complaint (2011), available at [http://www.prrac.org/pdf/BRHC\\_Complaint\\_2011.pdf](http://www.prrac.org/pdf/BRHC_Complaint_2011.pdf).

67 24 C.F.R. § 92.205(a)(1).



(LIHTC) to develop affordable rental housing. When combined with LIHTC, HOME is often used as gap financing to help LIHTC properties maintain their affordability.<sup>68</sup> Additionally, HOME funds may also be used to provide Tenant Based Rental Assistance (TBRA) as long as it is in agreement with HOME's rent requirements.<sup>69</sup> Under HOME TBRA, participating jurisdictions can provide free-standing rental assistance, anti-displacement assistance, security deposits, and utility deposits.<sup>70</sup>

## Program Administration

States and local participating jurisdictions are responsible for managing the operations of the HOME program and making sure that the activities are in compliance with all the HOME program requirements.<sup>71</sup> This includes the responsibility of monitoring state recipients, sub-recipients, and contractors using HOME funds.<sup>72</sup> Every year participating jurisdictions are required to conduct on-site inspections of

HOME assisted rental housing and tenant based rental assistance.<sup>73</sup>

The HOME Program regulation also outlines a role for HUD in monitoring the HOME participating jurisdiction. HUD maintains that each participating jurisdiction must keep records of HOME program activities to allow HUD to ensure that the participating jurisdictions are meeting program requirements.<sup>74</sup> Furthermore, HUD has established a computerized system called Integrated Disbursement and Information System (IDIS) that disburses the allocated HOME funds to each participating jurisdiction.<sup>75</sup> IDIS also assists HUD in keeping track of the use of HOME funds as it collects and reports information on each project.<sup>76</sup> IDIS allows the participating jurisdiction to set up projects, draw funds, and mark the project as complete. As our next discussion illustrates, issues with IDIS were brought into the spotlight in 2011 which subsequently revealed the various weaknesses of the HOME program.

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68 For more information on how to combine LIHTC and HOME visit: <http://www.nyc.gov/html/hpd/downloads/pdf/HOME-LowIncomeHousing-Tax-Credit-Guidebook.pdf>.

69 *Id.* See also HUD-1658-CPD, Tenant-based Rental Assistance: A HOME Program Model (1997) available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/library/modelguides/1997/1658](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/library/modelguides/1997/1658).

70 U.S. Department of Housing and Urban Development, Community Planning and Development, Notice CPD 96-07 (1997), available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/programs/home/topical/tenant](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/topical/tenant).

71 24 C.F.R. § 92.504(a).

72 *Id.*

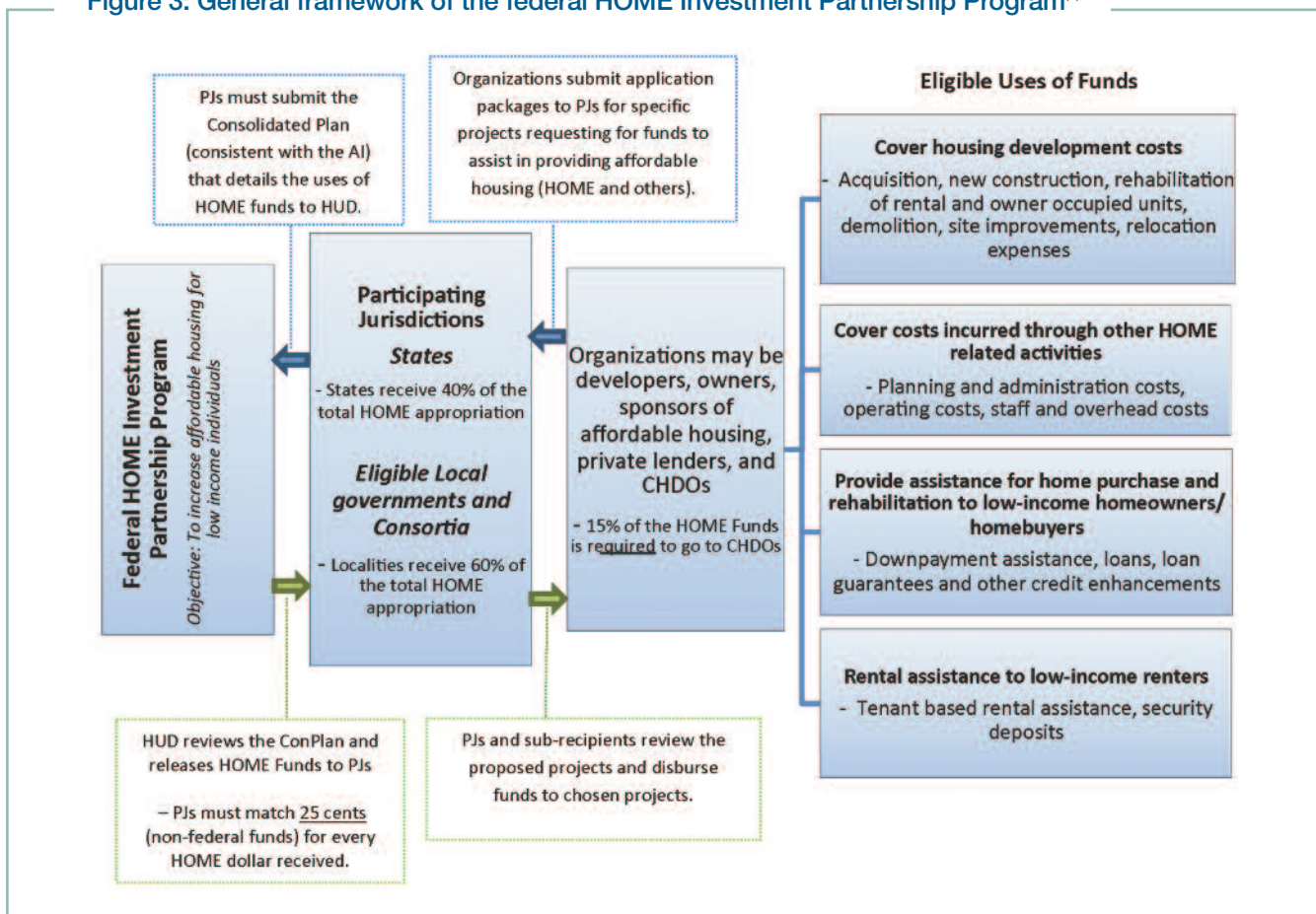
73 24 C.F.R. § 92.504(d).

74 24 C.F.R. § 92.508 (a).

75 24 C.F.R. § 92.502(a).

76 24 C.F.R. § 92.502. Along with the jurisdiction's records, audit reports, on-site inspection findings, IDIS is also used by HUD to conduct annual performance review of each participating jurisdiction. In cases where, HUD finds non-compliance, HUD reserves the right to allow PJs to take "corrective and remedial actions." See also 24 C.F.R. §§ 92.550(a) & 92.551.

Figure 3: General framework of the federal HOME Investment Partnership Program<sup>77</sup>



### The Washington Post Exposé leading to 2013 HOME rule changes

In 2011, the Washington Post published a series of investigative articles that highlighted weaknesses in HOME’s oversight and accountability structures.<sup>78</sup> Reporters revealed that HOME’s sole activities database, IDIS, only tracked when funding was drawn from PJ accounts, leaving the task of monitoring the construction progress of HOME-funded housing to the PJs themselves.<sup>79</sup> Reporters also drew attention to lax underwriting, inspection, and compliance standards that gave rise to financially unsustainable projects that would often fall through before construction began or

remain vacant for years.<sup>80</sup> While acknowledging that HOME was designed to accommodate local discretion in the disbursement of HUD funding, reporters asserted that this lack of oversight effectively gave a blank check to PJs and sub-grantees.

Reporters further claimed that lax oversight had resulted in widespread waste and fraudulence within HOME. The *Post* cited examples of local housing agencies recklessly awarding grants before land and building permits had been secured, investing in uninhabitable buildings, and turning a blind eye when inexperienced builders failed to deliver results.<sup>81</sup> In later articles, the *Post* also profiled amateur CHDOs, lacking

77 Created by PRRAC staff. See U.S. Dept. of Housing and Urban Development, *The HOME Program: Program Guide*, available at [portal.hud.gov/hud-doc/19669\\_homeguide.pdf](http://portal.hud.gov/hud-doc/19669_homeguide.pdf). See also 24 C.F.R. § 92 et. seq.

78 See Washington Post Special Reports, HUD Funding available at <http://www.washingtonpost.com/investigations/special-reports/HUD-funding>.

79 Debbie Cenziper & Jonathan Mummolo, *A Trail of Stalled or Abandoned HUD Projects*, *Washington Post*, May 14, 2011 available at [http://www.washingtonpost.com/investigations/a-pattern-of-hud-projects-stalled-or-abandoned/2011/03/14/AFWelh3G\\_story.html](http://www.washingtonpost.com/investigations/a-pattern-of-hud-projects-stalled-or-abandoned/2011/03/14/AFWelh3G_story.html).

80 *Id.*

81 *Id.*

oversight or guidance from both HUD and local housing agencies, fell prey to fraudulent real estate speculators.<sup>82</sup>

Through its investigation, the *Post* ultimately identified over 700 projects worth \$400 million that were stalled or defunct, and an additional 2,800 projects worth \$1 billion that were in “final draw”, meaning that they were listed as incomplete in IDIS despite having drawn all HOME funding from their accounts.<sup>83</sup>

In large part due to these revelations, Congress launched hearings before the House Financial Services Committee that further exposed weaknesses in HOME’s oversight and enforcement.<sup>84</sup> It was disclosed that grantees and sub-grantees were able to independently alter project data in IDIS, which effectively allowed any IDIS user to list incomplete projects as complete without HUD oversight.<sup>85</sup> This, in turn, made it extremely difficult for HUD to produce complete audit trails and impeded HUD’s ability to systematically detect and address instances of fraud, mismanagement, and noncompliance within the program.<sup>86</sup> Moreover, because HOME regulations did not require on-site inspections for every project, developers could steer inspectors towards a select handful of satisfactory projects and evade even limited oversight.<sup>87</sup>

Ultimately, Congress used these findings as the basis for significant cuts to HOME’s funding. As illustrated in Figure 2,

while HOME had received \$1.6 billion in FY 2011, it received only \$1 billion—approximately 38% funding cut—in FY 2012.<sup>88</sup>

### a) HUD’s Response

HUD officials defended HOME’s efficacy, pointing out that the 700 projects identified as defunct by the *Post* comprised only 2.5% of 28,000 open activities.<sup>89</sup> Officials also questioned whether these projects were, in fact, stalled—*Post* reporters had identified the 700 projects by filtering IDIS data for open activities that had not drawn HOME funds for at least 18 months, a measure which HUD officials insisted was a poor proxy for the status of the project itself.<sup>90</sup> Because HOME was just one of many layers of financing used for most affordable housing projects, HOME funding could be expended at any time during a project’s development.<sup>91</sup> Thus, officials maintained that a lag in fund withdrawals could merely indicate that developers were drawing funds from other financiers with more immediate deadlines.<sup>92</sup>

HUD also contended that HOME had adequate enforcement and oversight measures by pointing out that HUD field offices conducted annual risk assessments of all grantees. Annual risk assessments consider the size of the grant, the complexity of the project, the capacity of the grantee, and the length of time since the grantee had last been monitored for its financial status.<sup>93</sup> HUD also high-

82 *Id.* (according to the *Washington Post*, in 2007, East of River Development Corps (based in Washington, DC) used \$3.5 million in federal funding to purchase dilapidated apartment complexes from speculators. The purchases were based on wildly inflated appraisals from the speculators’ associate that were never properly vetted by either the CHDO or the municipal government. See Cenziper, Debbie, “Speculators score, District loses in affordable-housing deal”.)

83 *Id.*

84 U.S. House of Representatives, The Committee on Financial Services Joint Hearing, Fraud in the HUD HOME Program, available at <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=266369>. See also Oversight of HUD’s HOME Program, available at <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=242647>.

85 U.S. House of Representatives, The Committee on Financial Services Joint Hearing, Fraud in the HUD HOME Program, testimony of John B. McCarty (Acting Deputy Inspector General, HUD), Nov 2 2011 (Serial 112-81), available at <http://financialservices.house.gov/uploadedfiles/110211mccarty.pdf>.

86 U.S. House of Representatives, The Committee on Financial Services Joint Hearing, Fraud in the HUD HOME Program, testimony by James A. Heist (Assistant Inspector General for Audit, HUD), June 3 2011 (Serial 112-36), available at <http://financialservices.house.gov/uploadedfiles/060311heist.pdf>.

87 *Id.*

88 Debbie Cenziper, Congress Slashes HUD’s Construction Fund for the Poor, *Washington Post* (2011), available at [http://articles.washingtonpost.com/2011-11-17/politics/35281401\\_1\\_home-investment-partnerships-program-home-funds-hud-officials](http://articles.washingtonpost.com/2011-11-17/politics/35281401_1_home-investment-partnerships-program-home-funds-hud-officials).

89 U.S. Dept. of Housing and Urban Development, “The Home Program Works!” *The HUDdle: U.S. Department of Housing and Urban Development’s Official Blog*. 15 May 2011, available at <http://blog.hud.gov/index.php/2011/05/15/home-program-works/>.

90 U.S. Dept. of Housing and Urban Development, “HUD’s Analysis of the Washington Post’s Mislabeled HOME Projects”. *The HUDdle: U.S. Department of Housing and Urban Development’s Official Blog*. 18 Aug 2011, available at <http://blog.hud.gov/index.php/2011/08/18/hud%e2%80%99s-analysis-washington-post%e2%80%99s-mislabeled-home-projects/>.

91 *Id.* (HOME funds are often combined with LIHTC).

92 Marquez, Mercedes (Assistant Secretary for Community Planning and Development, HUD). Testimony before the Committee on Financial Services. Oversight of HUD’s HOME Program. Hearing. June 3 2011 (Serial 112-36), available at <http://financialservices.house.gov/uploadedfiles/060311marquez.pdf>.

93 *Id.*

lighted the role of monitoring reports that, among other things, tracked rates at which PJs committed their funds, vacancy rates in completed units, and projects in final draw for longer than 120 days.<sup>94</sup> Officials maintained that these measures allowed HUD to effectively monitor PJs and to sanction instances of noncompliance.

## b) New HOME Regulations

In December 2011, HUD proposed revisions to HOME regulations in response to continued public scrutiny.<sup>95</sup> New program regulations were finalized in July 2013 and targeted the structural weaknesses highlighted in the *Post exposé* by tightening compliance requirements and commitment deadlines.<sup>96</sup> However, HUD did not take the opportunity to make changes that would have addressed other pressing issues, including a number of fair and affordable housing policies that may adversely impact local patterns of residential segregation. While improving the program's accountability advances the overall functioning of HOME, there is still more that needs to be done to meet the primary goals of the program. Some of the main changes adopted in 2013 include:

**CHDO Capacity:** Existing regulations allowed CHDOs to demonstrate their capacity for handling complex HOME projects through continuous collaboration with consultants. In order to ensure that CHDOs improve their internal capacity, regulations now allow CHDOs to utilize outside consultants only during their first year of HOME funding. After this time, CHDOs must independently demonstrate their internal capacity using only permanent staff members. New regulations also mandate that PJs *certify* organizations

as being CHDOs and *document* their capacity to own, sponsor, or develop the HOME-funded project each time they receive committed funds.<sup>97</sup> Finally, in order to provide greater incentives for PJs to evaluate the performance and capacity of CHDOs, new regulations require HUD to reduce or recapture CHDO funds that are not expended within 5 years of reservation.<sup>98</sup>

**Tightening Compliance Deadlines:** The final regulation tightens compliance deadlines to ensure timely completion of HOME projects. The final rule requires that projects be completed within 4 years of the date of funding commitment.<sup>99</sup> However, the new regulation requires that PJs repay all HOME funds allocated to projects that fail to meet either of these deadlines.<sup>100</sup> The final regulation also circumvents projects that do not meet market need and are thus likely to remain vacant.<sup>101</sup> Similarly, PJs must submit a plan of action for future marketing efforts for rental units that remain unoccupied six months after completion. In general, if rental units remain vacant eighteen months after completion, all applicable HOME funds must be repaid.<sup>102</sup>

**Improved Monitoring and Oversight Procedures:** Additionally, new HOME regulations heighten oversight requirements for PJs.<sup>103</sup> PJs must also execute written agreements with sub-grantees that establish financing and subsidy layering standards, specify income and affordability determinations, and determine project schedules and budgeting.<sup>104</sup> Final regulations further require that PJs either conduct or evaluate the underwriting of projects to ensure that government assistance does not result in excessive return to developers and to safeguard the long-term financial viability of projects.<sup>105</sup> New regulations also update project inspection

94 *Id.*

95 U.S. Department of Housing and Urban Development, HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Standards, 76 Fed Reg 242 (December 16, 2011), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/pdf/2011-31778.pdf>.

96 2013 HOME Final Rule, *available at* <https://www.onecpd.info/home/home-final-rule/>.

97 24 C.F.R. § 92.300(a).

98 24 C.F.R. § 92.500(d)(1)(c).

99 PJs may receive a 12-month extension only if they provide HUD with plans to overcome project obstacles and a proposed schedule for completion.

100 24 C.F.R. § 92.205(e)(2).

101 For example, homeownership units not sold within nine months must now be converted into rental units. 24 C.F.R. § 92.254(a)(3).

102 24 C.F.R. § 92.252.

103 For example, PJs are required to create written policies, procedures and systems that assess project risk and monitor the compliance of sub grantees. *See* 24 C.F.R. § 92.504(a).

104 24 C.F.R. § 92.504(c).

105 This involves assessing the basic housing market conditions of project neighborhood, gauging the soundness of subsidy layering used to finance the project, and evaluating the experience and capacity of the developer, 24 C.F.R. § 92.250(b).



requirements. PJs must now conduct annual inspections to monitor the financial condition of rental projects with at least 10 HOME units.<sup>106</sup> PJs are also required to conduct on-site inspections every three years. While new regulations still do not demand that every unit be inspected, provisions are set forth to determine a “statistically valid” sample of units for inspection.<sup>107</sup> These standards are meant to assure the financial viability of projects and compliance with property maintenance standards and completion deadlines. Notably, there were no improved fair housing monitoring procedures in the new regulations.

**Affirmative Marketing:** Finally, under the new regulations, HOME affirmative marketing requirements were expanded to add all HOME funded programs, such as, TBRA and down payment assistance programs.<sup>108</sup> HOME’s affirmative marketing requirements are aimed at making sure eligible applicants are aware of the unit for rent or sale. It is also worth mentioning that the new rule requires marketing plans be submitted to HUD for rental units not occupied within six months after the date of project completion.<sup>109</sup>

**Additional Provisions:** The new regulations define the special needs population that TBRA can target for assistance as those who are homeless, elderly or disabled.<sup>110</sup> Also, HOME funds can now be used to pay utility deposits.<sup>111</sup> Tenant selection policies used by HOME jurisdictions must be based on local housing need and consistent with the

ConPlan.<sup>112</sup> Finally, the final rule describes fees that states and jurisdictions are prohibited from charging.<sup>113</sup>

## Fair Housing Implications

While the final HOME regulations seek to promote efficient program administration, these regulatory revisions have experienced a mixed reception among fair and affordable housing advocacy groups.<sup>114</sup> One area of particular concern is a new regulation that permits PJs to limit their HOME-funded housing to specific populations, including low-income occupational subpopulations such as teachers and artists.<sup>115</sup> HUD officials have justified the revision, maintaining that it merely reaffirms HOME’s emphasis on local partnership and flexibility by formalizing existing practices among PJs and developers.<sup>116</sup> However, advocates argue that allowing PJs to prioritize certain populations above others may draw attention away from those groups with the greatest need and thereby exacerbate housing disparities for racial and ethnic minorities and extremely low-income households.<sup>117</sup>

Another issue in the final rule is the lack of clear guidance on the prohibition of discrimination against rental subsidy assistance holders.<sup>118</sup> This regulation was not revised, but was merely shifted to a different section within the text of the final rule. While HUD officials have maintained that the provision adequately reflects existing anti-discrimination provisions in the National Affordable Housing Act (NAHA),

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106 24 C.F.R. § 92.504(d)(2).

107 24 C.F.R. § 92.504(d).

108 Previous HOME regulations only required jurisdictions to apply their affirmative marketing plan to HOME assisted projects with five or more units. *available at* <https://www.onecpd.info/home/home-final-rule/section-by-section-summary/subpart-h/#section92.351>

109 24 C.F.R. § 92.252 (HUD also requires HOME funds to be repaid for units not occupied within 18 months of the project completion date).

110 24 C.F.R. § 92.209(c)(2)(i).

111 24 C.F.R. § 92.209(a) (Utility allowances are now required to be updated annually).

112 24 C.F.R. § 92.209(c).

113 24 C.F.R. § 92.214(b) (PJs cannot charge fees for the administration of HOME program activities to those receiving assistance under HOME. However, Rental project owners cannot charge fees for things that are uncustomary in rental housing. PJs may charge a fee to homebuyers for housing counseling.)

114 *See* Letter to U.S. Dept. of Housing and Urban Development, re: HOME Investment Partnerships Program, Comments on proposed regulations (Feb. 14, 2012) *available at* [http://prrac.org/pdf/PRRAC\\_HOME\\_comments\\_2-14-12.pdf](http://prrac.org/pdf/PRRAC_HOME_comments_2-14-12.pdf).

115 24 C.F.R. § 91.320(k)(2)(v).

116 78 Fed. Reg. 44631 (July 24, 2013) *available at* <https://www.federalregister.gov/articles/2013/07/24/2013-17348/home-investment-partnerships-program-improving-performance-and-accountability-updating-property>.

117 Letter to U.S. Dept. of Housing and Urban Development, re: HOME Investment Partnerships Program, Comments on proposed regulations (Feb. 14, 2012) *available at* [http://prrac.org/pdf/PRRAC\\_HOME\\_comments\\_2-14-12.pdf](http://prrac.org/pdf/PRRAC_HOME_comments_2-14-12.pdf).

118 24 C.F.R. § 92.253(d)(4).

advocates point out that NAHA itself fails to clearly or holistically define source of income discrimination.<sup>119</sup> Thus, advocates argue that this regulation should be augmented with clarifications that anti-discrimination prohibitions extend far beyond the direct or overt refusal to rent to voucher holders and tenant based rental assistance recipients.<sup>120</sup>

More broadly, HOME continues to lack mechanisms to ensure that grantees will take substantive steps to counter residential segregation. The flexibility in the HOME program allows for HOME funds to be spent on projects that do not always reflect the fair housing needs of the community (e.g. the production of affordable senior

*The flexibility in the HOME program allows for HOME funds to be spent on projects that do not always reflect the fair housing needs of the community (e.g. the production of affordable senior housing instead of family housing in areas with good schools or the siting of HOME family rental units in high poverty areas).*

housing instead of family housing in areas with good schools or the siting of HOME family rental units in high poverty areas). Consequently, HOME may fall short of the mandate to affirmatively further fair housing even when administered in total accordance with new regulations. There are not enough requirements to ensure that program grantees site HOME assisted units in places that have lower poverty levels and greater life chances. In order to answer whether the HOME program is affirmatively furthering fair housing, this report next analyzes the HOME program nationally, and in select local participating jurisdictions and their associated MSA.

119 See Letter to HUD re: HOME Investment Partnership Program, *supra* note 117.

120 *Id.*

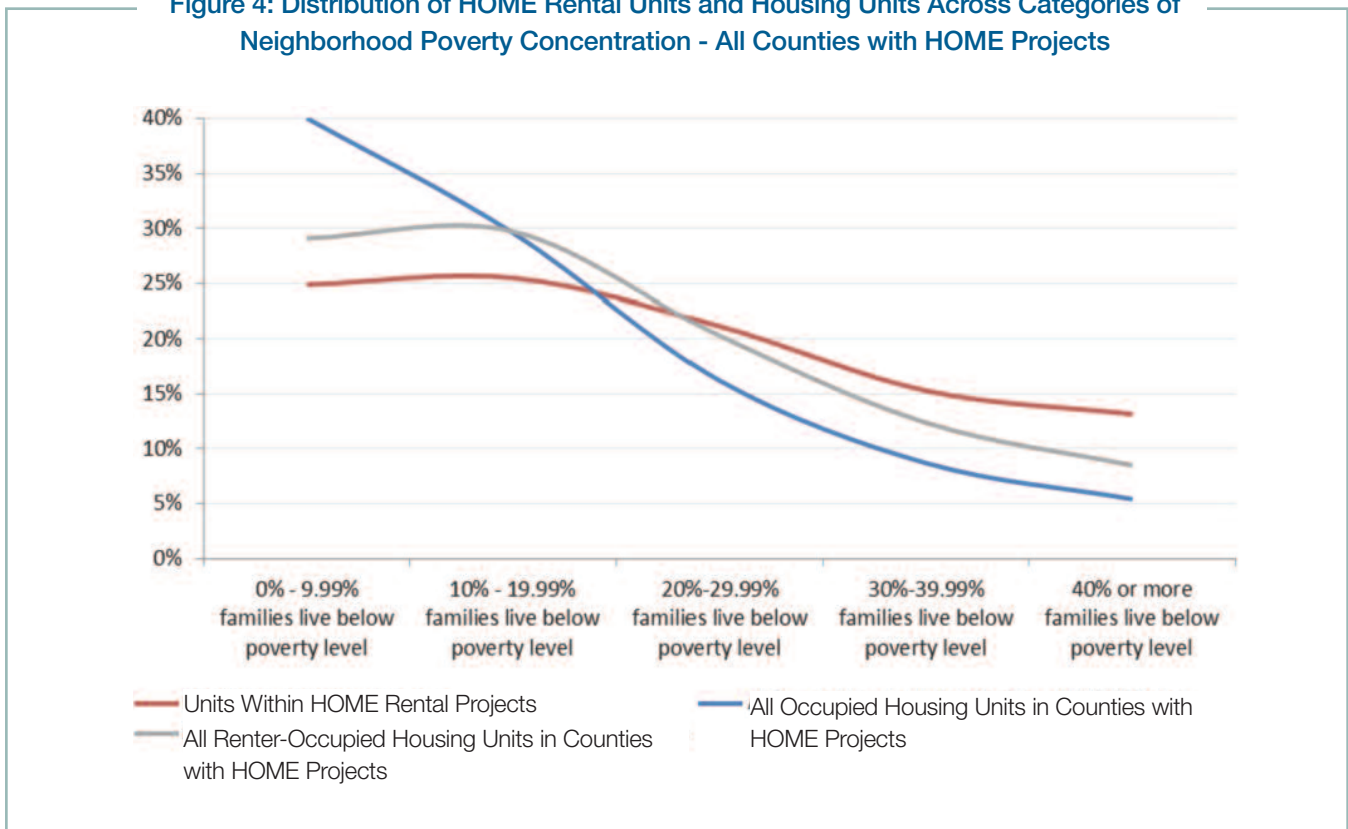
## CHAPTER II

# National Patterns of HOME Rental Units\*

Like other federally funded low-income housing programs, HOME rental subsidies have been largely located in neighborhoods that are racially and economically concentrated.<sup>121</sup> The following graphs shows the national distribution of HOME rental units by neighborhood race

and poverty concentration, compared to the distribution of all occupied housing units, and all renter-occupied housing units in U.S. counties that have at least one HOME rental project:<sup>122</sup>

**Figure 4: Distribution of HOME Rental Units and Housing Units Across Categories of Neighborhood Poverty Concentration - All Counties with HOME Projects**



\* We are grateful for the assistance of Dr. Brian J. Stults of Florida State University for his assistance with the data analysis in this chapter.

121 The locational data in this section includes data on cumulative multi-family HOME projects and units which is matched against four variables at the census tract level for the nation and the 50 most populous metropolitan areas (as of 2011): percentages of families living below poverty level, spread of non-white population, total occupied housing unit distribution, renter-occupied housing distribution. Non-white population is defined as all persons except non-Hispanic Whites. The national analyses include counties that have HOME projects in them. The 50 MSA analyses include all counties in the MSA regardless of the presence of a HOME project.

122 Data from 2007-2011 American Community Survey 5-year estimates, available at [www.census.gov](http://www.census.gov), Dept. of Housing and Urban Development, Office of Community Planning and Development (CPD) available at <http://egis.hud.gov/cpdmaps/>.

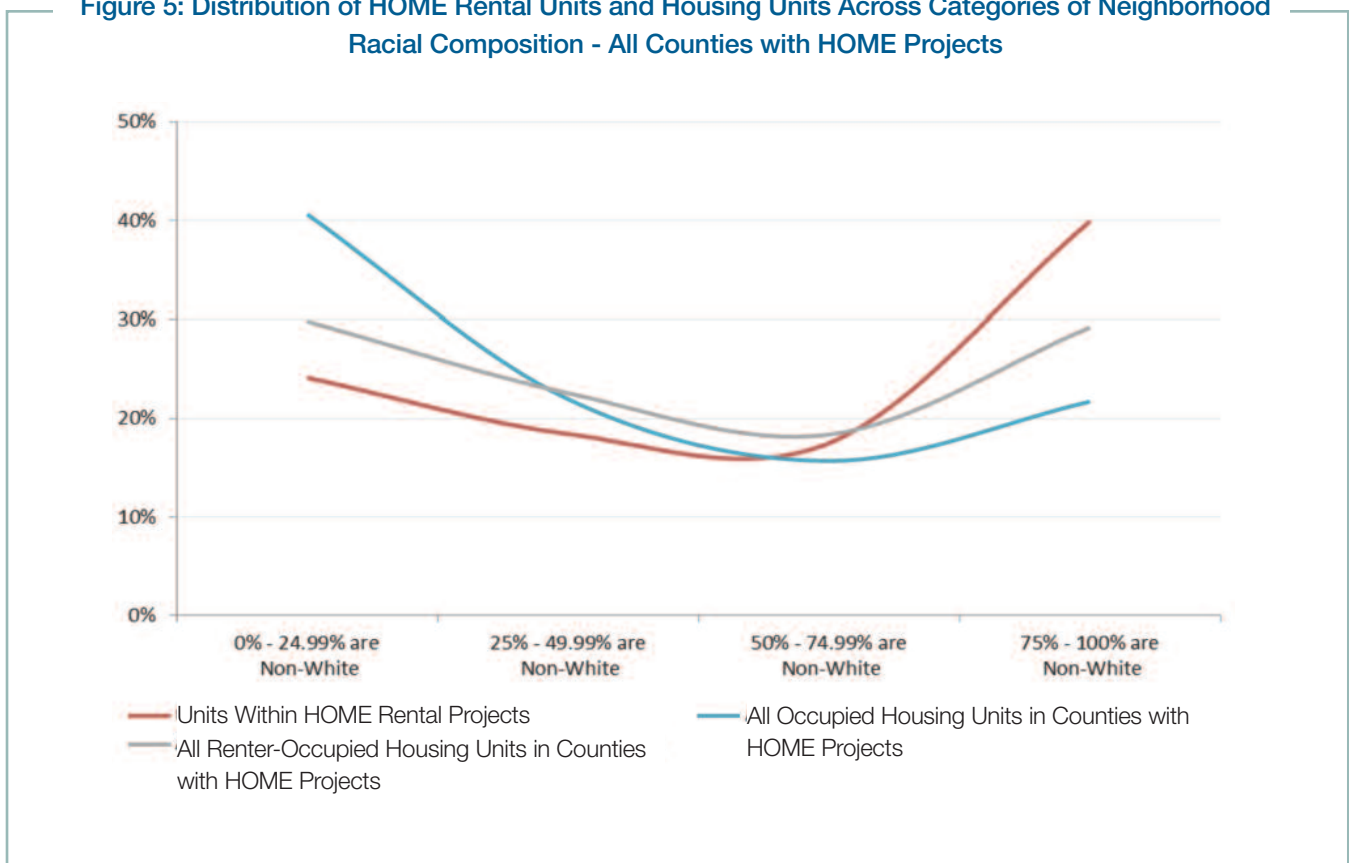
As Figure 4 shows, almost 40% of total occupied housing units in the US are located in areas that have less than 10% of the families living below poverty level.<sup>123</sup> In comparison, only 25% of the HOME rental units are located in these low poverty areas. The distribution of HOME rental units is closer to the distribution of renter-occupied units in the US, but still shows a significantly more concentrated pattern. Additionally, almost 28% of the HOME units are located in areas with greater than 30% family poverty level compared to only 14% of all occupied housing units.

The dispersal of units according to the racial composition of the neighborhoods in the US show that 40% of the HOME

rental units are situated in areas that have more than 75% non-white population as shown in Figure 5.<sup>124</sup> Total occupied units are less concentrated in these high minority areas with 41% of occupied units concentrated in areas with less than 25% non-White population. Only 24% of the HOME rental units are in these areas with lower percentages of non-White population. The renter-occupied units are more evenly distributed than the HOME rental units.

These disparities are even stronger when we compare the distribution of HOME rental units in the 50 largest metropolitan areas.<sup>125</sup> As illustrated in Figure 6, approximately 64% of all occupied housing units are in areas with less than 10%

**Figure 5: Distribution of HOME Rental Units and Housing Units Across Categories of Neighborhood Racial Composition - All Counties with HOME Projects**



123 See Appendix F, Table: 2

124 See Appendix F, Table: 3

125 Based on the graphs, we assume that the non-metro data in the national analysis includes many counties without significant poverty concentration or non-White population.



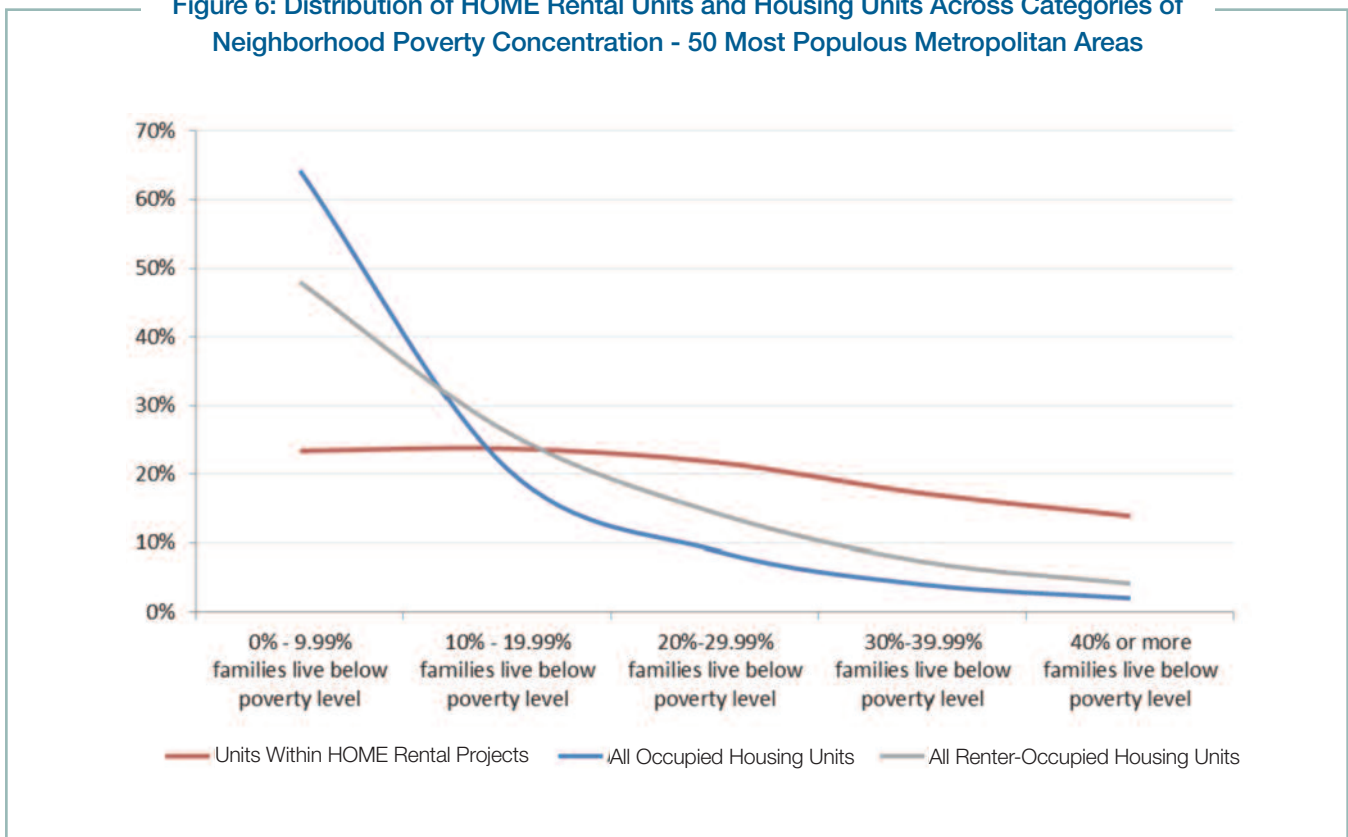
family poverty level when compared to 23% of HOME rental units located in these areas.<sup>126</sup> Even when compared with the distribution of renter-occupied units in these metro areas (which takes exclusionary land use patterns into account), the concentration of HOME rental units is dramatic.

In terms of the spread of HOME rental units against the racial composition of the 50 largest MSAs, Figure 7 shows that more than half or 54% of the HOME rental units are located in areas that have more than 75% non-white population.<sup>127</sup> In comparison, only about 21% of the total occupied housing and 30% of the renter-occupied housing units

are located in a high minority area with 75% or more non-white population. Only 11% of the HOME rental units are in areas that have less than 25% non-White population, compared to 37% of all occupied housing units and 23% of the renter-occupied housing units.

As the graphs suggest, if HOME rental projects in segregated census tracts serve predominantly minority residents, this data means that HOME projects have the effect of increasing racial and economic segregation and concentration and preventing increased racial and economic integration and access to opportunity across regions.

**Figure 6: Distribution of HOME Rental Units and Housing Units Across Categories of Neighborhood Poverty Concentration - 50 Most Populous Metropolitan Areas**



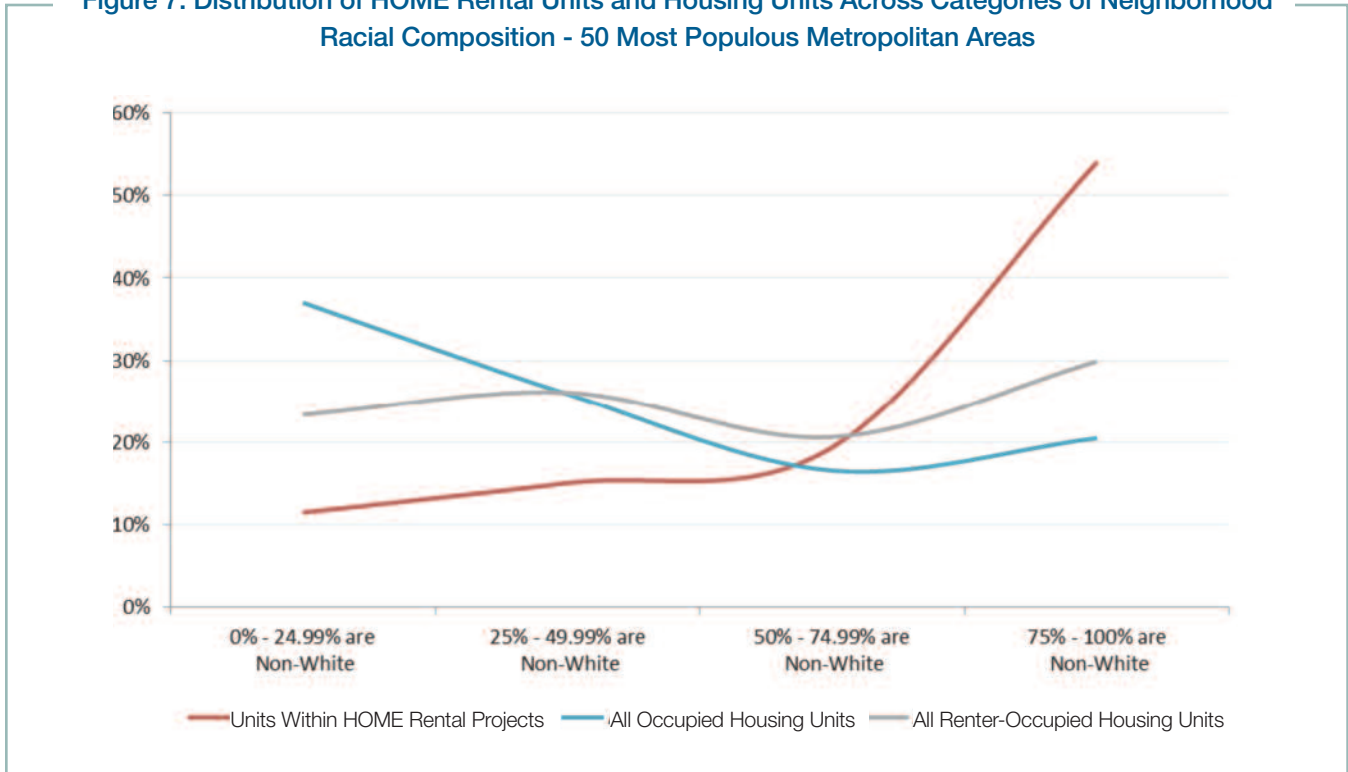
126 See Appendix F, Table 4. The graphs of the 50 largest metropolitan areas cannot be directly compared to the national analyses as it includes data from all counties in the MSA with or without HOME projects. For a list of 50 most populous MSAs included in the analyses see Appendix G

127 See Appendix F, Table: 5

What is causing this segregated pattern of rental housing development in the HOME program, and why is HUD permitting it? To explore this question, this report looks at three selected metropolitan areas and puts forward some program-

matic explanations, and recommendations for HOME program reform, to better align the program with HUD's fair housing goals.

**Figure 7: Distribution of HOME Rental Units and Housing Units Across Categories of Neighborhood Racial Composition - 50 Most Populous Metropolitan Areas**



## CHAPTER III

# Analysis of Three Participating Jurisdictions and Their Metropolitan Areas

In the past few decades, researchers have extensively studied the issues surrounding concentration of subsidized housing in high poverty areas.<sup>128</sup> The focus of these studies has mainly revolved around concentration of public housing projects, housing voucher holders, and low-income Tax Credit developments (LIHTC). Another study found that the highest concentration of subsidized units occurred when different types of subsidized units were co-located in higher poverty concentration areas.<sup>129</sup> This study concludes that programs such as the LIHTC should look at locations of other existing subsidized units prior to siting in order to prevent over-concentration. Since HOME funds are often used as a gap-financing tool for LIHTC properties, much of the issues surrounding the placement of LIHTC properties may also impact the location of HOME units.<sup>130</sup>

Even though the HOME program is one of the major programs that provide affordable housing to low-income families, the spatial concentration of HOME projects has received minimal attention from researchers (in part because of the difficulty in obtaining national data). Given that Kotz, Ellen, Khadduri, and other researchers have shown that subsidized housing is often located in high poverty areas, a deeper analysis of the operation and implementation of the HOME program is necessary to see if these patterns are also true for this program. To answer the larger question about whether HOME is affirmatively furthering fair housing, we need to understand which projects are chosen, what proce-

dures are followed to ensure that the projects are located in areas of opportunity, and consequently where they are located. For this reason, we have chosen three different local participating jurisdictions across the United States and their associated MSA. We also use a cumulative dataset (as of September 2013) available at HUD on HOME multifamily rental locations. An analysis of the metropolitan area encompassing the city is added to help develop a regional understanding of the potential problems and assist in finding workable solutions.

The local participating jurisdictions and MSAs included in this study are as follows: Milwaukee, WI, Hartford, CT, and Baltimore, MD. These locations were selected for review in part because of the PRRAC's familiarity with their local markets and the diverse ways in which they implement the HOME program. These participating jurisdictions each have unique priorities, and housing problems, but they all use HOME funds to meet their affordable housing needs for their most vulnerable populations. This program review attempts to explore whether the HOME program, as currently administered and regulated, has adequately met its affirmatively furthering fair housing obligation by promoting racial and economic integration. This review also analyzes and compares the Consolidated Plans, Analysis of Impediments (AI), Comprehensive Annual Performance Reviews (CAPERs), among other reports and administrative data of the chosen local participating jurisdictions.

128 See Ingrid Gould Ellen and Keren Mertens, *Do Federally Assisted Households Have Access to High Performing Public Schools?* (PRRAC, November 2012); Molly W. Metzger, "The Re-concentration of Poverty: Patterns of Housing Voucher Use, 2000 to 2008," *Housing Policy Debate* (Vol. 24, #3, 2014); Jill Khadduri, *Are States Using the low-income Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?* (PRRAC and the National Fair Housing Alliance, 2007). For a detailed literature review on the concentration of assisted housing, see Kotz, Rosalind. 2011. The spatial concentration of subsidized housing, PhD Dissertation, University of Delaware. Available at [http://www.prrac.org/pdf/Kotz\\_Dissertation\\_12-5-11.pdf](http://www.prrac.org/pdf/Kotz_Dissertation_12-5-11.pdf).

129 Kotz, *supra* note 121.

130 U.S. Dept. of Housing and Urban Development, HOME and the Low-Income Housing Tax Credit Guidebook. Available at <http://www.nyc.gov/html/hpd/downloads/pdf/HOME-LowIncomeHousing-Tax-CreditGuidebook.pdf>.

For the purposes of this review, we have examined census tracts that have 20%, 30%, and 40% families living below level. Areas with more than 40% poverty rate are designated as “extreme poverty” tracts.<sup>131</sup> Additionally, minority concentrated areas are loosely defined as areas with more than 50% “minority population”.<sup>132</sup> Minority population is defined as all persons except non-Hispanic Whites. The most recent census tract level demographic and socioeconomic data from the American Community Survey is used to provide depth to the analysis of the HOME program. The locations of the HOME program are from the HUD’s Office of Community Planning and Development (CPD).

Ultimately, the greater goal of this review is to identify aspects of the program’s institutional processes and regulations where changes may increase program’s capacity to affirmatively further fair housing choice.

### a. Milwaukee, Wisconsin

In 2012, the city of Milwaukee had a population of 594,328.<sup>133</sup> Milwaukee is a majority-minority community with 39% non-Hispanic Blacks, 37.4% non-Hispanic Whites and 17.1% Hispanics. In FY 2013, Milwaukee received \$ 4,412,594 in HOME funding.<sup>134</sup> As a participating jurisdiction, Milwaukee receives HOME funding directly from HUD. Milwaukee’s Community Development Grants Administration is responsible for administering all federal grant programs and producing all HUD reports. Milwaukee stated in its 2010-2014 ConPlan that federal grant funds, including HOME funds, will be focused on “. . . creating viable neighborhoods and providing decent housing and economic opportunity for all community residents.”<sup>135</sup> The strategies the city has identified to help

achieve this goal are programs related to antipoverty, community and economic development, housing and public housing improvements.<sup>136</sup>

In awarding federal block grant funds, Milwaukee considers grant proposals at a neighborhood level. The city acknowledges that neighborhoods are unique and sometimes require different services. In order to identify the neighborhoods that need aggressive reinvestment Milwaukee uses a standard from the HUD Choice Neighborhoods Program – the “Neighborhood Revitalization Strategy Areas (NRSA).”<sup>137</sup> In addition to identifying target neighborhoods for reinvestment, the city encourages citizen participation in the ConPlan. For the 2010-2014 ConPlan, the city hosted around 20 community meetings throughout Milwaukee to ensure that those wanting to participate had an opportunity. Milwaukee also distributed a survey that asked citizens to rank funding priorities. Citizens ranked crime prevention first and providing loans and grants to homeowners for repairs second. Housing production and housing rental rehab projects ranked in the bottom half.

Residential segregation is a factor the city considers when funding projects. The two NRSA located within the city are located in areas of Milwaukee that have high levels of racial and ethnic concentration. Taking this information into consideration as well as other relevant information, Milwaukee drafted its housing needs assessment. The city also encourages all projects funded with federal block grants or tax credits to include opportunities for residents to be employed.<sup>138</sup>

The city also identified three general priorities that relate to housing – homeownership, rental housing, and safe and well maintained neighborhoods.<sup>139</sup> In order to meet these goals

131 See Kneebone, Elizabeth, Carey Nadeau, and Alan Berube. 2011. The Reemergence of Concentrated Poverty, Brookings Institution, *available at* <http://www.brookings.edu/research/papers/2011/11/03-poverty-kneebone-nadeau-berube>.

132 This is HUD’s definition of minority neighborhood at the MSA level. At a smaller scale, minority neighborhoods are places where the percentage of minority persons “is at least 20 points higher than the total percentage of minority in the housing market. See [http://www.huduser.org/portal/glossary/glossary\\_m.html](http://www.huduser.org/portal/glossary/glossary_m.html).

133 2008-2012 American Community Survey, 5-yr estimates, See Appendix C.

134 See Appendix A.

135 City of Milwaukee, Wisconsin, 2010-2014 Five Year Consolidated Plan and Strategy at 6, *available at* [http://www.milwaukee.gov/ImageLibrary/User/jsteve/20102014\\_CONSOLIDATED\\_PLANFINAL.pdf](http://www.milwaukee.gov/ImageLibrary/User/jsteve/20102014_CONSOLIDATED_PLANFINAL.pdf).

136 *Id.* at 7.

137 This is the idea that concentrating resources in an impacted area can have huge impact. This is the strategy behind HUD’s Choice Neighborhood Initiative. For more information please visit [http://www.hud.gov/offices/cpd/about/conplan/pdf/choice\\_neighborhood.pdf](http://www.hud.gov/offices/cpd/about/conplan/pdf/choice_neighborhood.pdf).

138 2010-2014 Milwaukee Consolidated Plan, *supra* note 128 at 38.

139 *Id.* at 40.

the city developed an implementation strategy that included: expanding homeownership through homebuyer counseling, preserving the current housing stock, helping with homebuyer assistance, developing more units of affordable housing, supporting CHDOs, and reducing the number of blighted properties.<sup>140</sup>

This strategy hopes to increase the number of affordable rental housing units in the city and rehabilitate current units. This strategy will be achieved by improving the condition of the city's rental housing, supporting projects that are targeted towards elderly and disabled citizens, using Low-Income Housing Tax Credits to develop affordable housing, and supporting housing improvement projects.

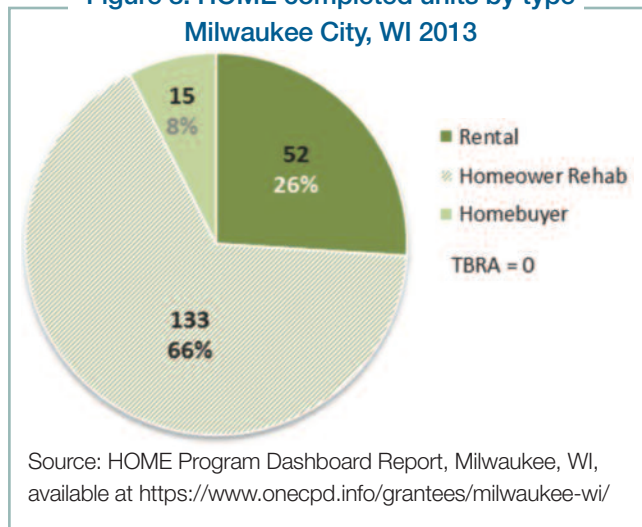
The city's 2013 "Dashboard" report indicates that during the 2013 calendar year Milwaukee city completed a total of 200 HOME units.<sup>141</sup> Among these units almost 66% or 133 were homeowner rehabilitation unit. There were around 52 homebuyer units completed. However, only around 8% or 15 of the total completed units were rental units. The most

recent CAPER report from Milwaukee, FY2012, gives a similar report with an overlapping time frame, combining HOME and CDBG expenditures.<sup>142</sup> From the CAPER and the dashboard reports, it seems like Milwaukee city may be focusing on rehabilitating homes using the HOME funds.

Milwaukee's most recent Analysis of Impediments was in 2005.<sup>143</sup> Despite acknowledging in the 2005 AI that the city's AI should be updated yearly, Milwaukee has failed to update its AI in over eight years. Since Milwaukee's AI is so out of date, this report does not rely on it. The 2005 AI should be recognized for its focus on both fair housing and affordable housing. The AI lists "affordable housing supply" as one of the impediments to fair housing in Milwaukee. It also recognizes that "the lack of resources and incentives for Affordable Housing Developers" is an impediment to fair housing in the city. The policies of the suburban cities and counties that are based out of NIMBY-ism are also identified as an impediment to fair housing.

The map below shows how clustered the HOME multi-family rental units are in Milwaukee. Compared to the other maps in this report, Milwaukee has the largest number of HOME rental units. These units are all clustered in the center of the city in areas with poverty rates in excess of 20% or 30%. A minimal percentage of the HOME units are located in areas that have 10% or below poverty. As Figure 9 shows, almost 86% of the total 898 HOME assisted multifamily rental projects are located in areas that have more than 20% of families living below poverty level, and over 68% of the total rental HOME units are in neighborhoods with greater than 30% families living below poverty level.<sup>144</sup> A similar percentage of projects are located in areas with more than 50% minority population.<sup>145</sup> Furthermore, almost 45% of the HOME rental units are in areas where more than 40% of families live below poverty. The percentage of HOME assisted units that are in both >20% families living below

**Figure 8: HOME completed units by type Milwaukee City, WI 2013**



140 *Id.*

141 2013 HOME Dashboard Report - Milwaukee, WI, yearly totals calculated by PRRAC staff, available at <https://www.onecpd.info/grantees/milwaukee-wi/>.

142 City of Milwaukee, Consolidated Annual Performance Evaluation Report available at <http://city.milwaukee.gov/ImageLibrary/User/jsteve/2012CAPER-FINAL-HUD-March28-20.pdf>. In this report the city used a combination of Community Development Block Grant (CDBG) and HOME funds to rehabilitate homes creating 112 affordable units that were later sold to low-to-moderate income individuals. 2010-2014 Milwaukee Consolidated Plan at 78. 177 homes were assisted with CDBG/HOME funds for repairs. HOME funds were also used to help homebuyers with down payment and closing cost assistance. These funds helped 19 homebuyers. The HOME funds used served individuals at or below 80% area median income.

143 City of Milwaukee Analysis of Impediments to Fair Housing (2005). available at <http://www.ci.mil.wi.us/ImageLibrary/User/jsteve/MilwaukeeAI.pdf>.

144 See Appendix D.

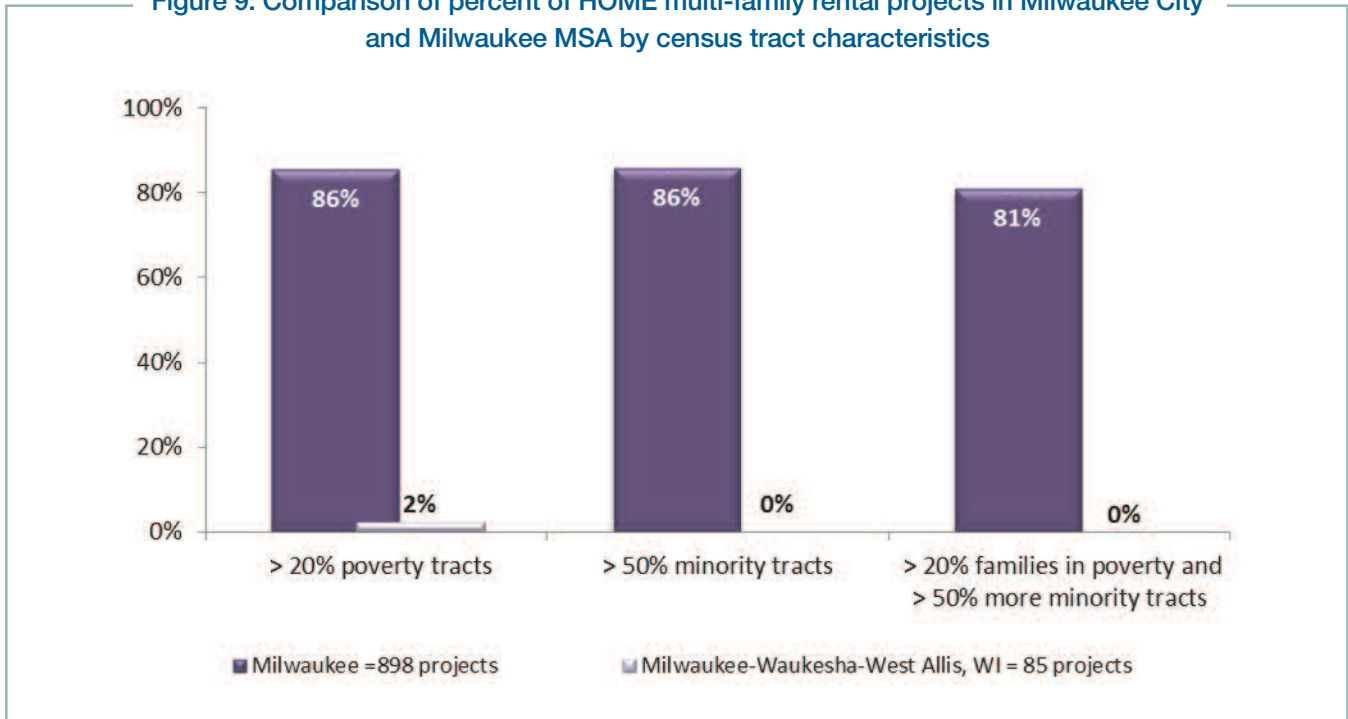
145 Areas of minority concentration can also be calculated using the regional percent minority population; we are using a simple 50% standard to compare across the three metro areas.



poverty and >50% minority neighborhoods is at 81%. These numbers seem even starker when compared to the Milwaukee-Waukesha-West Allis MSA (excluding the Milwaukee city) where only 2% of the total 85 projects in the MSA are in neighborhoods with greater than 20%

poverty and none in over 30% poverty. None of the projects in the MSA outside Milwaukee city are in areas with greater than 50% minority or areas that have both greater than 20% families living below poverty and 50% or more minority population.

**Figure 9: Comparison of percent of HOME multi-family rental projects in Milwaukee City and Milwaukee MSA by census tract characteristics**

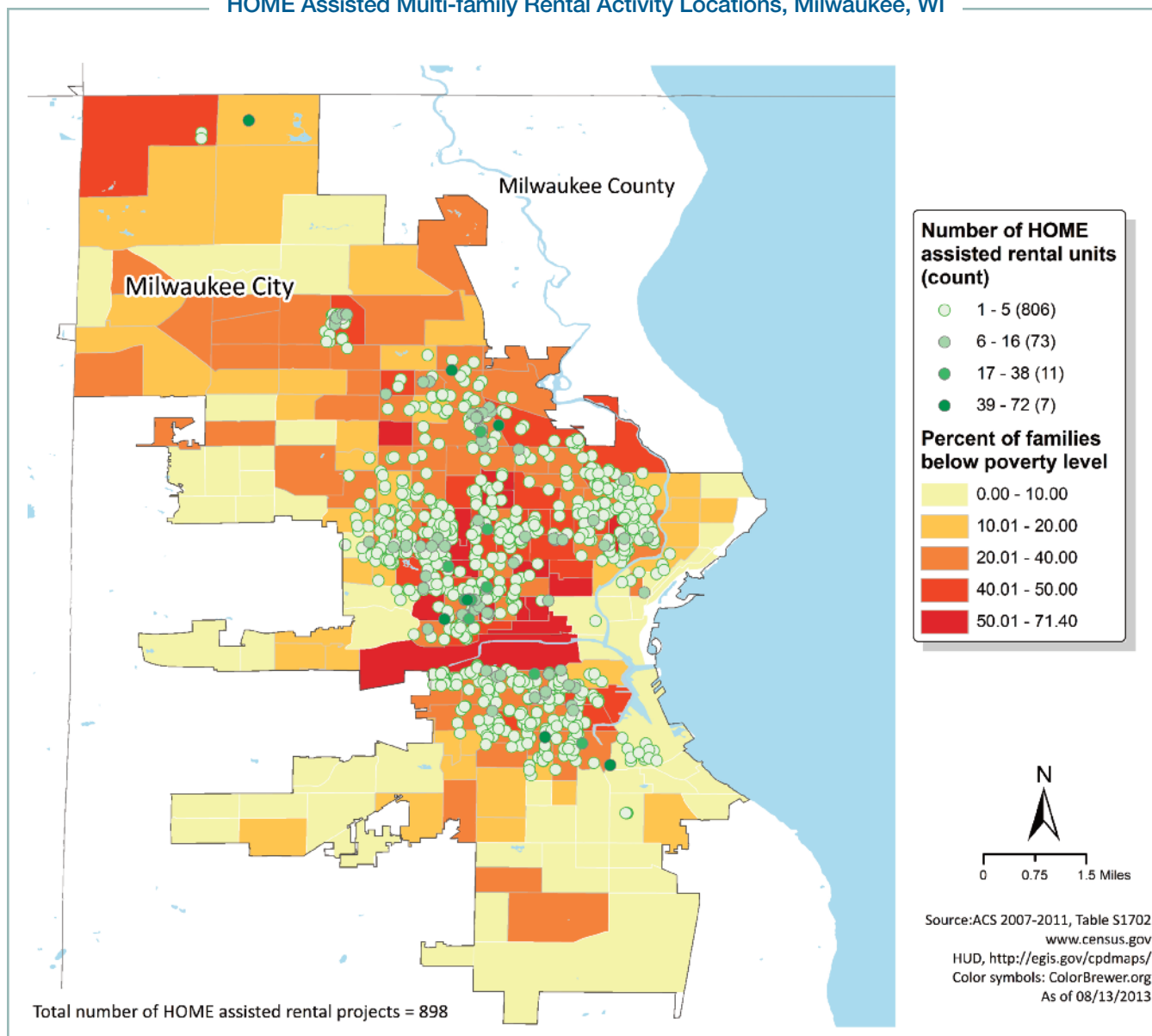


The city of Milwaukee has a well-documented, high level of black-white segregation.<sup>146</sup> This makes it difficult for HOME units to be located in the city in areas with low segregation levels. Additionally, as previously mentioned, the city is comprised of mostly high poverty census tracts. The lack of low-poverty census tracts within the city makes it difficult for the city to meet its affirmatively furthering hous-

ing obligations. Thus, the current siting of HOME units does not affirmatively further fair housing. While it is notable that the city has identified targeted neighborhoods for reinvestment, until those neighborhoods receive significant non-housing reinvestment dollars they will continue to be low-opportunity neighborhoods.

146 See Appendix B, Figure 21.

## HOME Assisted Multi-family Rental Activity Locations, Milwaukee, WI



### b. Balance of Milwaukee-Waukesha-West Allis MSA

The Milwaukee MSA is made up of Milwaukee County (including Milwaukee City), Waukesha County, Ozaukee County and Washington County. A little over 1.5 million people live within the Milwaukee MSA.<sup>147</sup> According to 2008-2012 ACS 5-year estimates, the majority of people liv-

ing within the MSA are non-Hispanic Whites (69%) and non-Hispanic Blacks make up the largest minority population (16.4%).<sup>148</sup> Non-Hispanic Blacks are concentrated in Milwaukee County (26.1%) and represent less than 2% of the population in the other three counties of the MSA.<sup>149</sup> The MSA contains 431 census tracts.<sup>150</sup> Excluding Milwaukee city, the MSA contains only one census tract

147 See Appendix C.

148 See Appendix C.

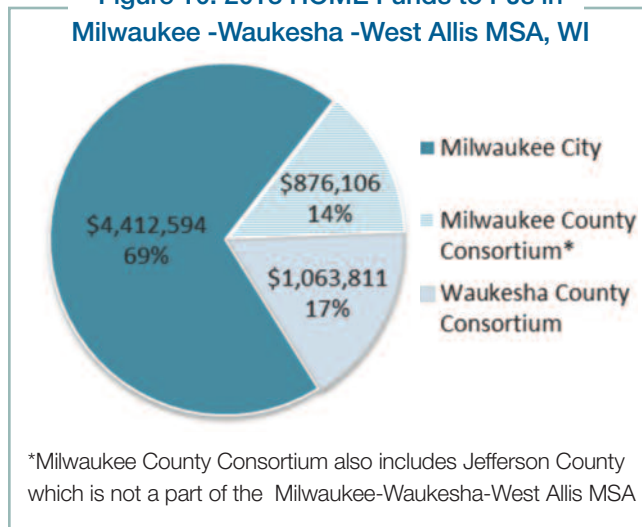
149 2008-2012 ACS 5-year estimates (Table DP05) available at [www.census.gov](http://www.census.gov).

150 PRRAC staff calculation based on 2007-2011 American Community Survey (Table S1702).

where 20% or more families live below poverty.<sup>151</sup> In Milwaukee city, 53% of the census tracts have 20% or more families living below poverty.

Within the Milwaukee MSA there are the Milwaukee County Consortium and the Waukesha Consortium. As the chart below shows, in 2013, the Waukesha County Consortium received \$1,063, 811 in HOME funds and the Milwaukee County Consortium received \$876,106 in HOME funds.<sup>152</sup>

**Figure 10: 2013 HOME Funds to PJs in Milwaukee -Waukesha -West Allis MSA, WI**



Milwaukee County has very little authority over affordable housing development. The municipalities that comprise Milwaukee County have the authority over local zoning, building codes and other developmental authority.<sup>153</sup> Milwaukee County does have a Fair Housing Ordinance that gives the county some authority over housing policy. The Milwaukee Consortium is composed of eighteen municipal governments and two communities.<sup>154</sup> This struc-

ture makes it difficult for the consortium to develop affordable housing in certain municipalities because the approval must be granted at the municipal level.<sup>155</sup> While the Milwaukee HOME Consortia provides tenant based rental assistance to housing choice voucher holders, homebuyer assistance, homeowner rehab, multifamily rental new construction, multifamily rental rehab and new construction for ownership,<sup>156</sup> the MSA map below shows that HOME rental units are being built in only a few of the eighteen municipalities of the consortia.

*In July 2014, Milwaukee County adopted a Cooperation Agreement that governs CDBG and HOME funds granted from an Urban County Consortium to sub-recipient cities, towns and villages. Sub-recipients must agree to do 3 out of 10 action items to affirmatively further fair housing (AFFH). Additionally, there must be documentation recording the actions taken to AFFH and an annual report of the actions must be submitted to the County.*

The other consortium in the Milwaukee MSA is the Waukesha Consortium. This consortium is made up of four counties (Waukesha, Jefferson, Ozaukee, and Washington). Lack of affordable housing was identified as one of the weaknesses in the consortium's ConPlan.<sup>157</sup> Like the Milwaukee County Consortium, the Waukesha Consortium also has difficulties with municipal approval power over affordable housing.<sup>158</sup> Zoning and land use restrictions were identified as barriers to the construction of affordable housing in the draft 2014 Annual Action Plan.<sup>159</sup>

151 *Id.*

152 Grantee Summary available at <http://egis.hud.gov/cpdmmaps/> (percentages calculated by author).

153 Milwaukee County Consolidated Action Plan 2014-2018 at 128.

154 *Id.* at 103.

155 *Id.* (The Consolidated Plan suggests that the county conduct more fair housing outreach to the eighteen participating municipalities in an effort to get them to approve affordable housing. Another suggestion by the Consolidated Plan is to market affordable housing as "workforce housing or another positive term".)

156 *Id.* at 119.

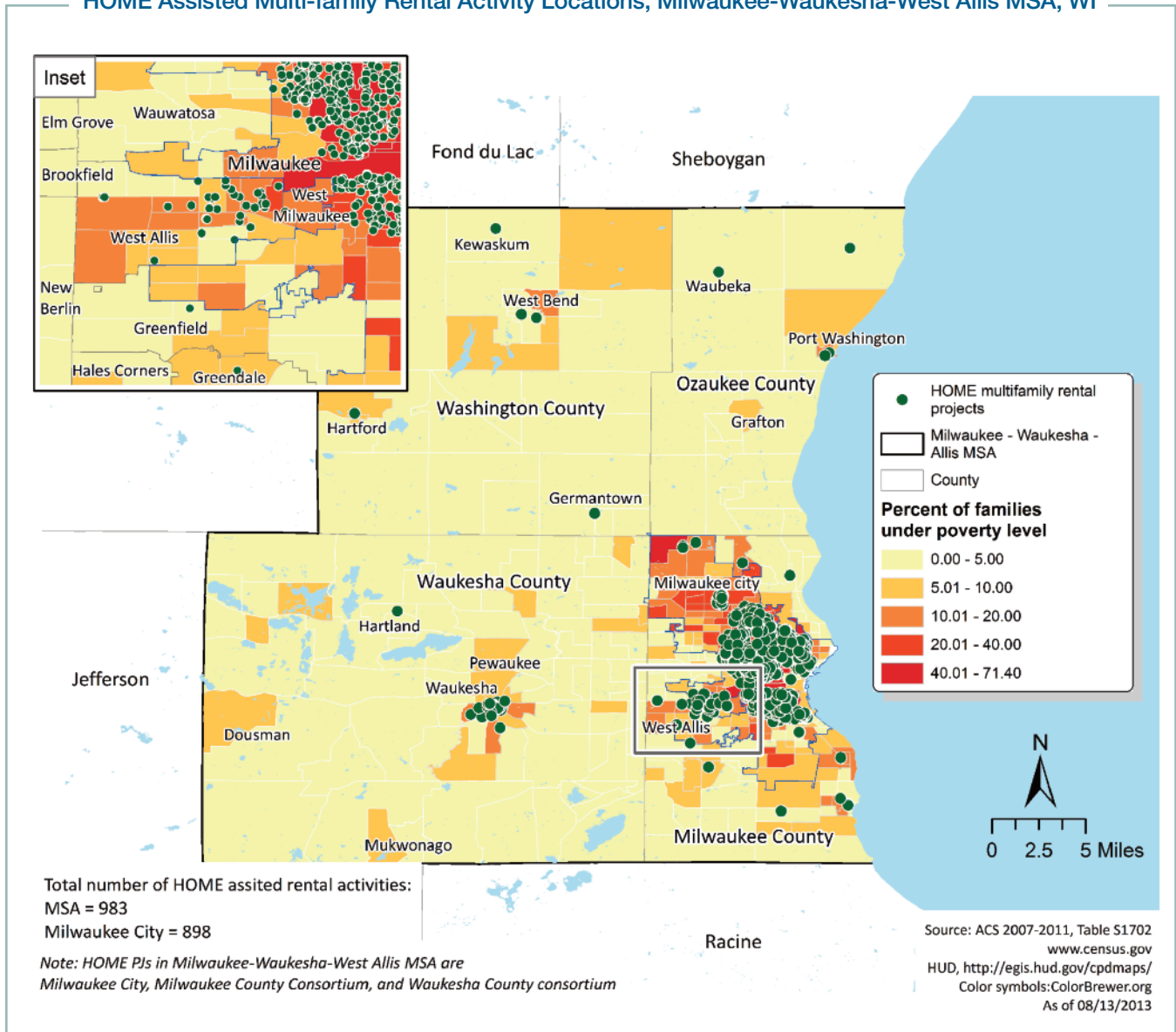
157 Waukesha Consolidated Plan 2010-2014 at 6 available at [http://www.waukeshacounty.gov/uploadedFiles/Home\\_Page/In\\_The\\_News/2009/CDBG%20Plans.pdf](http://www.waukeshacounty.gov/uploadedFiles/Home_Page/In_The_News/2009/CDBG%20Plans.pdf)

158 *Id.* at 10 (the ConPlan describes that county and municipal officials "lack political will and commitment to affordable housing); See also Waukesha Consortia Annual Action Plan 2014 available at [http://www.waukeshacounty.gov/uploadedFiles/Media/PDF/Parks\\_and\\_Land\\_Use/Planning\\_and\\_Zoning/Community\\_Development/2014%20Annual%20Plan-website%20posting%2010-8-13\(1\).pdf](http://www.waukeshacounty.gov/uploadedFiles/Media/PDF/Parks_and_Land_Use/Planning_and_Zoning/Community_Development/2014%20Annual%20Plan-website%20posting%2010-8-13(1).pdf).

159 *Id.*



## HOME Assisted Multi-family Rental Activity Locations, Milwaukee-Waukesha-West Allis MSA, WI



Forming a regional consortium is one way metro areas can reduce the clustering of HOME rental units. However, as our analysis of the Milwaukee County and Waukesha Consortia shows, a consortium does not always produce desirable siting of HOME units unless fair housing goals are at the heart of the agreement.<sup>160</sup> As we have previously discussed, the HOME program's requirement that PJs, like Milwaukee City, use funds within their jurisdiction can result in clustering of HOME units in high poverty areas. If

Milwaukee city wants to keep its own PJ status (or if Milwaukee County were to reject a merger) another approach would be for the city of Milwaukee to partner with the surrounding consortium in joint projects as permitted by 24 CFR § 92.101. The new "Partnership Agreement" between Milwaukee County and sub-recipient municipalities is a step in a more positive direction (see accompanying box).

160 In 2011, the Metropolitan Milwaukee Fair Housing Council filed a fair housing complaint against Waukesha County, Wisconsin. See Metropolitan Milwaukee Fair Housing Council v. Waukesha County, Wisconsin. (Fair Housing Complaint filed with the Department of Housing and Urban Development on March 15, 2011.) Available at <http://www.relmanlaw.com/docs/RDC-MMFHC-Waukesha-2011.9.8-Revised-Complaint-accepted-by-HUD.pdf>.

### c. Hartford, Connecticut

The city of Hartford is a majority-minority community with a population of around 124,879 according to 2008-2012 ACS estimates.<sup>161</sup> It occupies a small geographic area at the center of a large, wealthy, and predominantly white metropolitan area with over 30 separate towns.<sup>162</sup> A large portion of Hartford's population (33.9 %) is living below the poverty level.<sup>163</sup> Of the total population, almost 43% of Hartford city were Hispanics, 16.7% non-Hispanic Whites, and 34.8% non-Hispanic Blacks.<sup>164</sup> As Appendix B shows, Hartford has a segregation index of 57%.<sup>165</sup> Almost 27% of Hartford's seniors are living below the poverty level (seniors make up 9% of Hartford's population).<sup>166</sup> The housing stock in Hartford consists of mostly older structures built before 1990.<sup>167</sup> In fact, only 6% of Hartford's housing units were built after 1990.<sup>168</sup> The majority of census tracts in the city of Hartford contain 20% or more families living below poverty.<sup>169</sup> Hartford's most recent ConPlan states that HOME funds are "not strictly limited to any specific geographic area of the city as virtually every neighborhood in the city suffers from socio-economic ills."<sup>170</sup>

During the fiscal year of July 1, 2013 to June 30, 2014 Hartford city received \$1,214,327 from HUD in HOME Program funds.<sup>171</sup> In addition to the funds received from HUD, Hartford expected to receive \$252,000 in HOME Program income and leverage about \$10,000,000 in private funds for HOME.<sup>172</sup> Hartford, like many grantees is experiencing a decline in the amount of grant funding they receive.

The FY 2013 HOME funding is a decrease of about 40% in funding from 2009.<sup>173</sup> This decrease in funding has effected how efficiently Hartford can meet its priorities outlined in the Consolidated Plan.

Hartford's AI does not fully explore the barriers to fair housing faced by low to moderate income Hartford residents. Instead, the Hartford AI identifies impediments based on survey results from the community and from various data sources like fair housing complaints, fair housing testing results and foreclosure data.<sup>174</sup> The AI gives little detail about the results of testing or the nature of fair housing complaints. These identified impediments do little to help inform the consolidated plan which is supposed to base its priorities off of the identified impediments to fair housing. As mentioned in the introduction, once the AFFH rule is final the Analysis of Fair Housing will require more detail than what was provided by Hartford's AI.

Hartford's first housing priority for the current fiscal year is homeownership.<sup>175</sup> The city has used HOME funds to create opportunities for residents to purchase, rehabilitate, and construct homes that house larger families. This priority is being met by combining HOME funds with other federal funding sources like the Neighborhood Stabilization Program. Hartford's homeownership programs are targeted at families making 51 to 80 percent of Hartford's median area income.<sup>176</sup> The city estimated that HOME funds along with other resources will be used to help 35 families become

161 See Appendix C.

162 City of Hartford, Analysis of Impediments to Fair Housing Choice July 1, 2011 – June 30, 2016 at 5.

163 See Appendix C.

164 *Id.*

165 White – Black dissimilarity indices estimate the percentage of Blacks (non-Hispanic) who have to move from their census tracts in order to have a geographic distribution similar to Whites (non-Hispanic) in the City. The dissimilarity index is ranked from 0 to 100 – the higher the index, the higher the level of segregation between the two groups. A dissimilarity index of 60 and above is considered to be very high. US2010 Discover America in a new century, available at <http://www.s4.brown.edu/us2010/segregation2010/Default.aspx>. See also Appendix B, Figure 21.

166 Hartford Analysis of Impediments, *supra* note 155 at 7.

167 *Id.*

168 *Id.* at 7.

169 PRRAC staff calculation based on 2007-2011 American Community Survey (Table S1702).

170 City of Hartford, Consolidated Plan 2010-2015 at 9, available at [http://www.hartford.gov/images/Grants/HUD\\_Reports/CONPLAN%202010-2015.pdf](http://www.hartford.gov/images/Grants/HUD_Reports/CONPLAN%202010-2015.pdf).

171 City of Hartford, Annual Action Plan at 5, available at [http://www.hartford.gov/images/Grants/HUD\\_Reports/Annual\\_Plan\\_13-14.pdf](http://www.hartford.gov/images/Grants/HUD_Reports/Annual_Plan_13-14.pdf).

172 *Id.*

173 See Appendix A.

174 Hartford Analysis of Impediments, *supra* note 155 at 20-24.

175 City of Hartford, Year Three Annual Action Plan to the Consolidated Plan July 1, 2012 – June 30, 2013 at 34, available at [http://www.hartford.gov/images/Grants/HUD\\_Reports/Annual\\_Plan\\_12-13.pdf](http://www.hartford.gov/images/Grants/HUD_Reports/Annual_Plan_12-13.pdf).

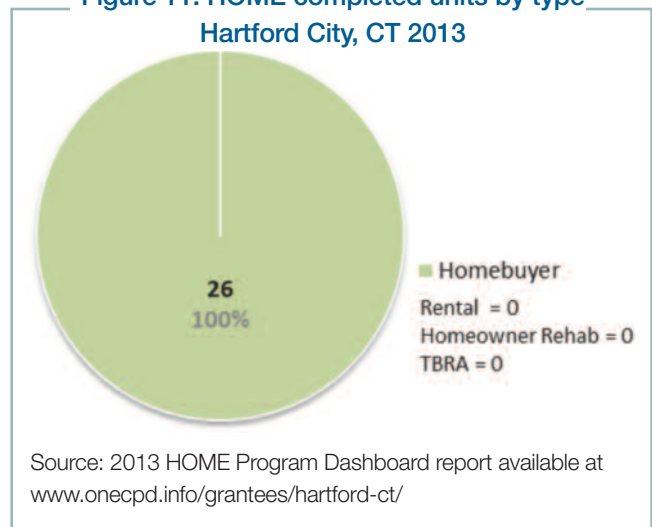
176 City of Hartford Consolidated Plan 2010-2015, *supra* note 163 at 23.

homeowners in fiscal year 2012-2013. Of the estimated 35 families to be assisted, Hartford expected that at least 25 of the families will be minorities.<sup>177</sup> According to Hartford's Consolidated plan, between the four year period from 2010-2014, 200 households are to receive some form of homebuyer assistance specifically funded by HOME.<sup>178</sup> The ConPlan also states that Hartford's second priority is the creation of affordable rental housing. HOME funds will also be used by CHDOs to develop multi-family properties during this time period.

Creating homeownership opportunities drives how HOME funding is distributed in Hartford. According to the city's most recent Annual Action Plan, the majority of affordable units created will be affordable homeownership units. In deciding which entities will receive HOME funding Hartford gives a preference to entities with proposals that create affordable homeownership opportunities.

During this fiscal year, Hartford plans to assist 40 families with homebuyer and down payment assistance, among which 12 will be low-income and the rest moderate-income. Besides that, Hartford expects to develop 50 units of housing. These units will be a mix of homeownership and rental housing, but preference will be given to homeownership proposals.<sup>179</sup> Of these 50 units, 10 of them will be targeted to low-income families while the remaining 40 are targeted to moderate income families.<sup>180</sup> Hartford has targeted moderate income families for homeownership because the city believes these families will be mostly likely to maintain the transition from rental housing to homeownership with some assistance.<sup>181</sup> HOME funds will also be used by Hartford to meet its second goal – developing affordable rental units.<sup>182</sup> The second goal prioritizes elderly citizens and veterans by giving units that accommodate them priority over low-income families.<sup>183</sup>

**Figure 11: HOME completed units by type  
Hartford City, CT 2013**



*If HOME funds were permitted to be used to develop affordable rental outside the city for low-income Hartford residents, there could have arguably been a larger fair housing impact.*

According to the 2013 Dashboard report, Hartford city had completed a total of 26 HOME projects during the year 2013.<sup>184</sup> As Figure 11 indicates, all of these projects were for assisting homebuyers. Given the over-concentration of low-income rental housing within the city, this priority makes some sense from a fair housing perspective. However, if HOME funds were permitted to be used to develop affordable rental outside the city for low-income Hartford residents, there could have arguably been a larger fair housing impact.

Prior to 2013, in contrast, Hartford has developed a significant number of HOME multifamily rental projects, which has contributed to segregation in the region. The map below shows the locations of cumulative HOME assisted rental activities in Hartford, CT since the start of the program. The map shows that all HOME rental units except a senior housing rental development are clustered in higher poverty census tracts. Also, the largest two HOME developments (those

177 City of Hartford, Year Three Annual Action Plan (2012 – 2013), *supra* note 168 at 45.

178 City of Hartford, Consolidated Plan 2010-2015, *supra* note 163 at 32.

179 City of Hartford, Year Three Annual Action Plan (2012 – 2013), *supra* note 168 at 36.

180 *Id.*

181 Hartford Consolidated Plan, *supra* note 163 at 23.

182 *Id.* at 25.

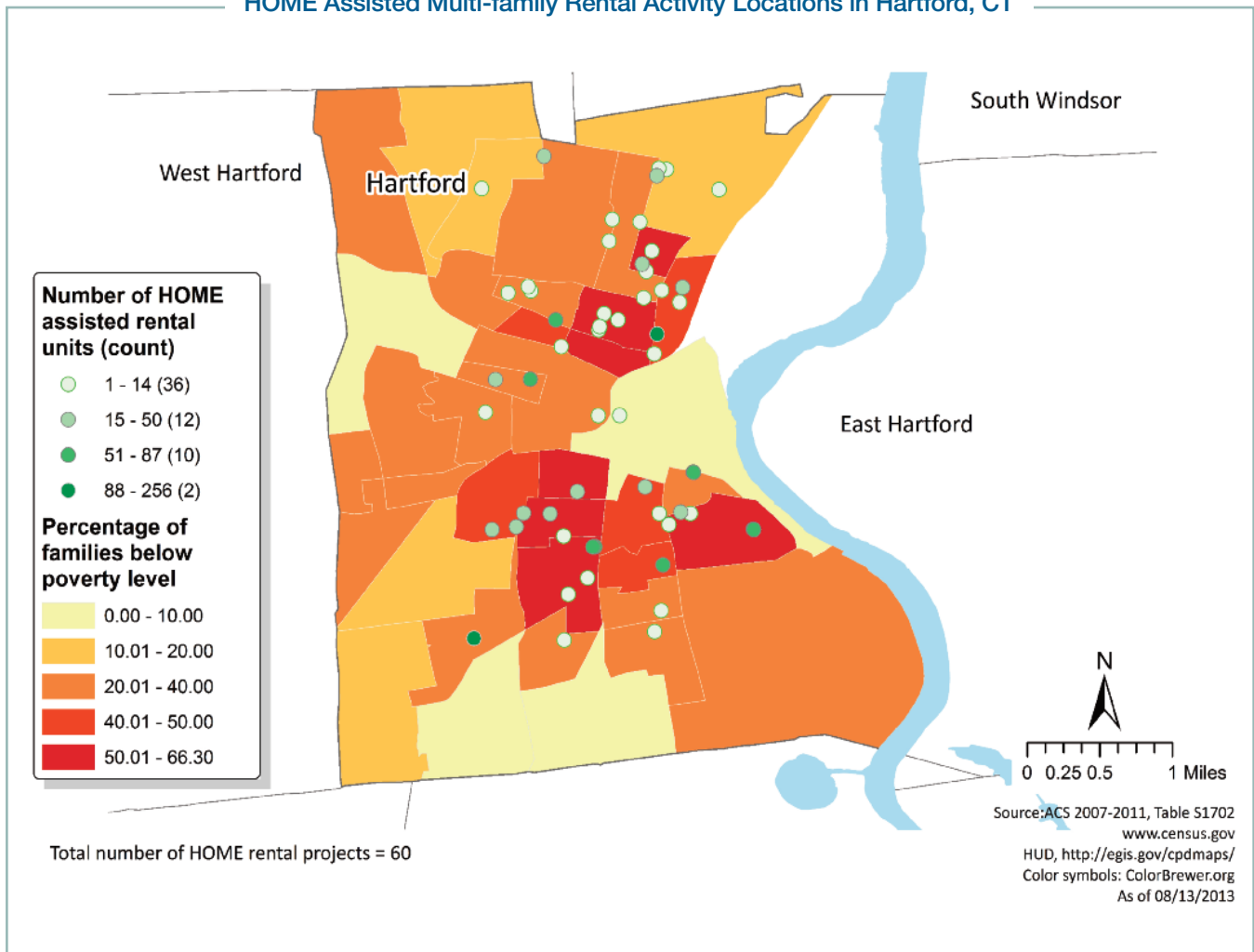
183 *Id.*

184 2013 HOME Program Dashboard Report-Hartford, CT, yearly total calculated by PRRAC staff, *available at* [www.onecpd.info/grantees/hartford-ct/](http://www.onecpd.info/grantees/hartford-ct/). Keeping in mind that there may be open and ongoing activities for these other types of projects in 2013.

with 88-256 units) are located in areas where 22% and 46% of families are living below poverty respectively. As Figure 12 shows, 90% of the HOME rental projects are in areas that have more than 20% families living below poverty. Almost, 88.3% of the rental projects are in areas that have 30% or more families living below poverty.<sup>185</sup> Furthermore, a majority of projects (90%) are in areas that have greater than 20% families living below poverty and have 50% or more minor-

ity population. Based on this map and analysis, if Hartford intends to resume using HOME funds to develop rental housing, it should take additional steps to avoid clustering of affordable rental units and either target the areas of the city that have poverty rates lower than 20% or create joint projects with the surrounding jurisdictions that will place HOME units in areas with lower poverty rates.<sup>186</sup>

**HOME Assisted Multi-family Rental Activity Locations in Hartford, CT**



185 See Appendix D.

186 Because of the history of exclusionary zoning in the region, strong state incentives would be necessary to encourage suburban participation.




#### d. Balance of Hartford-West Hartford-East Hartford MSA

The City of Hartford is the only HOME participating jurisdiction in the Hartford-East Hartford-West Hartford MSA other than the nearby city of New Britain. The MSA includes the counties of Hartford, Tolland and Middlesex. According to 2008-2012 ACS estimates, the Hartford MSA has a total population of 1.2 million with almost 71.4% non-Hispanic Whites, 12.5% Hispanics, and 10% non-Hispanic Blacks.<sup>187, 188</sup> An expanded map of the MSA indicates that most of the HOME multi-family rental projects are concentrated in the two PJs (Hartford and New Britain) with only a few projects scattered in other areas of Hartford County. There is only one HOME rental project in Tolland County and none in Middlesex County. These few developments outside of the two PJs are supported by the State of Connecticut's HOME program. However, Connecticut not only disburses HOME funds to non-participating jurisdictions in the MSA, but it also allocates HOME funds to cities that already receive HOME funds directly from HUD.<sup>189</sup>

When census tracts within Hartford city are excluded from the MSA, only 14 of the 250 census tracts in the MSA have 20% or more families living below poverty level.<sup>190</sup> In the city of Hartford, 30 of the total 40 census tracts have 20% or more families living under the federal poverty level. In regards to the location of HOME projects, in the larger Hartford metro area, excluding the city has only 38% and

18% of the projects in areas that have greater than 20% and 30% families living below poverty respectively.<sup>191</sup> Also, only 24% of the projects in the MSA are in areas that are both >20% families living below poverty and >50% minority population. Since many HOME projects are concentrated in the city of Hartford, it is not surprising that most of them are also located in higher poverty areas.

According to Connecticut's most recent AI, the state experiences extremely high levels of residential segregation between its suburban and urban areas.<sup>192</sup> The AI states that many urban centers are severely distressed and experience some of the highest poverty rates in the nation despite the fact that Connecticut's income per capita is among the highest of any state.<sup>193</sup> Urban centers also contain extreme concentrations of racial and ethnic minorities—44% of the state's minority population is clustered within just five of its cities.<sup>194</sup>



*Connecticut not only disburses HOME funds to non-participating jurisdictions in the MSA, but it also allocates HOME funds to cities that already receive HOME funds directly from HUD.*

In spite of these fair housing findings in the AI, Connecticut repeatedly spends HOME low-income rental funds in its poorest cities. As of 2003, over 40% of the state's subsidized housing units were concentrated in its five largest cities, with the poorest quarter of the state's municipalities overall receiving about 75% of total state and federal subsidized housing developments.<sup>195</sup> For example, projects in the PJ of New Haven received HOME allocations from the state of \$4,000,000 for a new construction and rehab project according to Connecticut's most recent CAPER.<sup>196</sup> Furthermore, Connecticut's 2010 CAPER states that

187 See Appendix C.

188 Decennial Census 2010, Profile of General Population and Housing Characteristics: 2010, Table DP-1, available at [www.census.gov](http://www.census.gov).

189 Connecticut Department of Economic and Community Development, 2010-15 Consolidated Plan for Housing and Community Development at 154 available at [www.ct.gov/doh/cwp/view.asp?a=4513&q=530462](http://www.ct.gov/doh/cwp/view.asp?a=4513&q=530462). Connecticut received \$11,512,030 in HOME funding during FY 2011-2012.

190 PRRAC staff calculation based on 2007-2011 American Community Survey (Table S1702).

191 See Appendix D.

192 See State of Connecticut Department of Economic and Community Development, State of Connecticut Analysis of Impediments to Fair Housing Choice Update at 6(2006), available at [www.ct.gov/doh/cwp/view.asp?a=4513&q=530462](http://www.ct.gov/doh/cwp/view.asp?a=4513&q=530462).

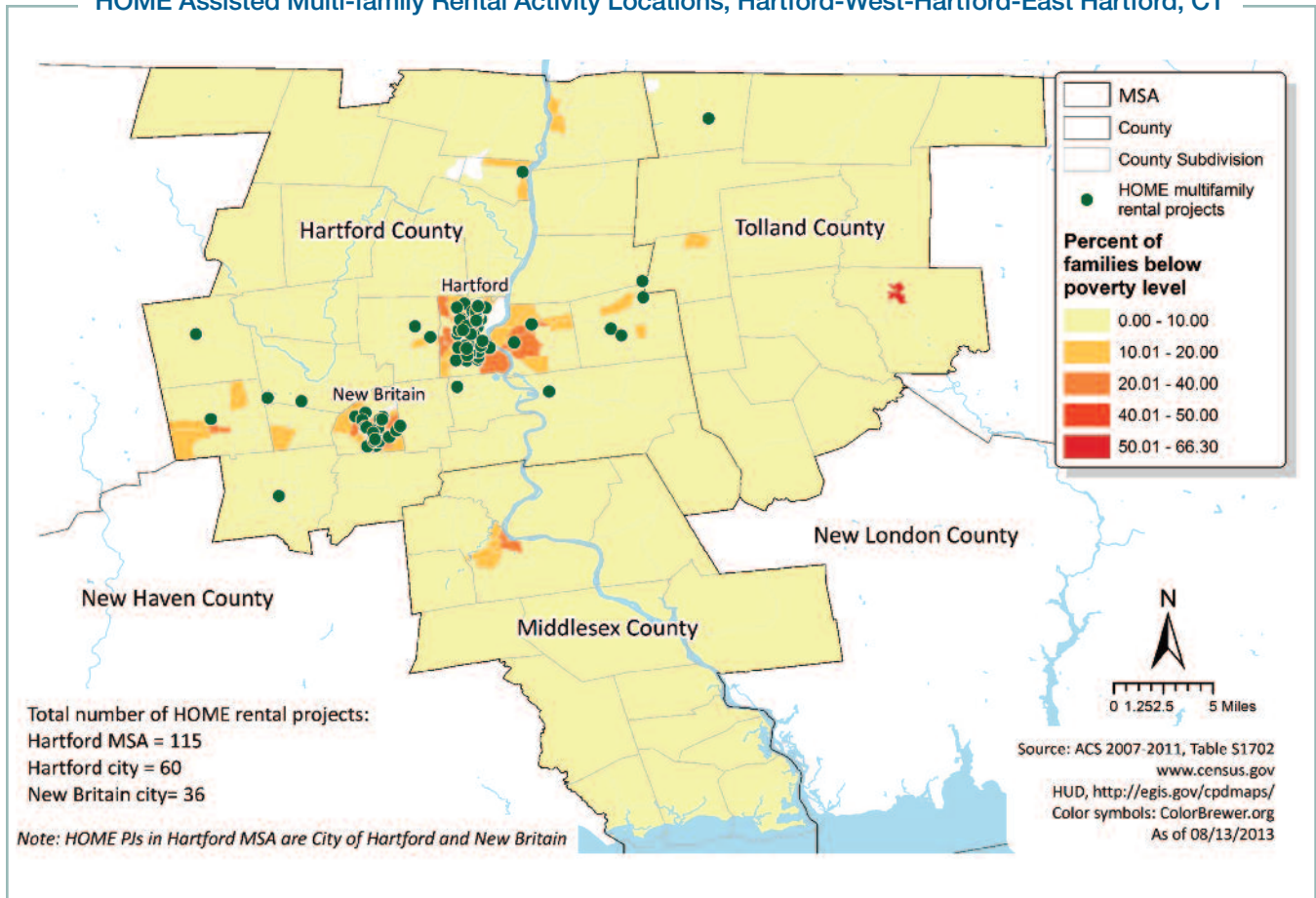
193 *Id.* at 20.

194 *Id.* at 21. Identifying the cities with a clustering of minority population as Bridgeport, Hartford, New Haven, Stamford, and Waterbury. See also Connecticut Analysis of Impediments at 79 (states the populations of Bloomfield and New Haven are majority-minority; Windsor, East Hartford, New London, and Bridgeport contain 30-50% minority concentrations; and Waterbury and Stamford contain 20-30% minority concentrations).

195 Connecticut Analysis of Impediments, *supra* note 184 at 6.

196 CAPERS at 47. Additionally, Connecticut allocated HOME funds to Bridgeport and Hartford which are also PJs. *Id.* at 72. See State of Connecticut HOME Investment Partnership Program available at <http://www.ct.gov/doh/cwp/view.asp?a=4513&q=530476> (the State of Connecticut distributes HOME funds to eligible applicants which include municipalities, non-profit organizations, CHDOs, for profit developers acquisition and individuals).

## HOME Assisted Multi-family Rental Activity Locations, Hartford-West-Hartford-East Hartford, CT

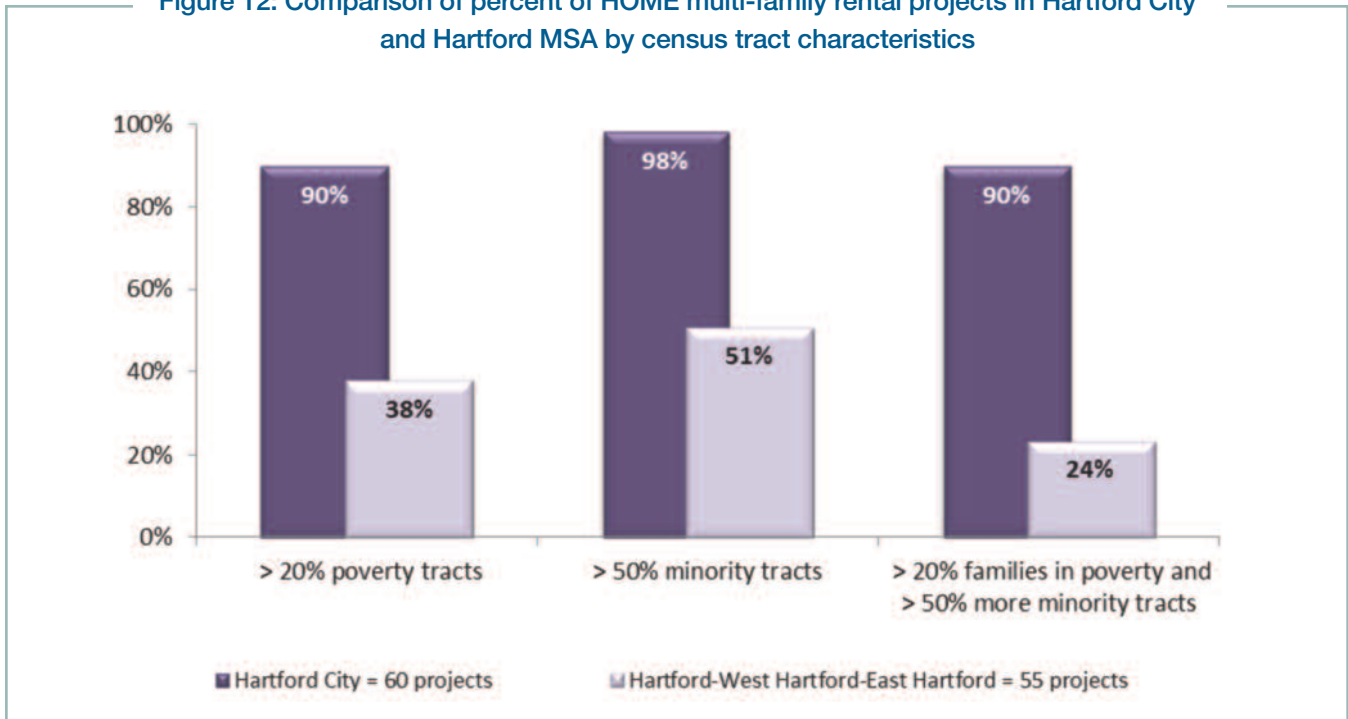


Connecticut contracted for two major homeownership projects totaling about \$5,317,027 in Hartford city.<sup>197</sup> The ability of projects within urban PJs to receive HOME funding from HUD and the state can be problematic when the funds may be perpetuating racial and economic segregation. We hope that this issue will be addressed by the proposed AFFH rule, which emphasizes coordination of fair housing planning on a regional level.

Our analysis indicates that Hartford city needs to work together with the neighboring jurisdictions in the MSA to find lower poverty areas for siting of HOME rental units. But the HUD rules restricting development outside the jurisdiction make this difficult. There are currently no consortia in Connecticut. Creating a consortium between Hartford and its surround suburbs would allow Hartford to site HOME rental units in higher opportunity areas.

197 State of Connecticut Department of Economic and Community Development 2010 State of Connecticut Performance Evaluation Report (PER) at 63, available at [www.ct.gov/doh/cwp/view.asp?a=4513&q=530462](http://www.ct.gov/doh/cwp/view.asp?a=4513&q=530462).

**Figure 12: Comparison of percent of HOME multi-family rental projects in Hartford City and Hartford MSA by census tract characteristics**



#### e. Baltimore City, Maryland

With a population estimate of 620,644 in 2012, Baltimore has a high percentage of non-Hispanic Blacks (63.2%) residing in the city, followed by non-Hispanic Whites (28%) and Hispanics (4.1 %).<sup>198</sup> There is a high level of White-Black residential segregation in the city - 69% as measured by the “dissimilarity index”.<sup>199</sup>

Baltimore is projected to receive \$3,151,273 in HOME funds for the FY 2013-2014.<sup>200</sup> A detailed breakdown of the annual HOME funds granted to Baltimore city shows that the amount of HOME funds has been consistently decreasing from \$7,242,818 in 2009 to \$3,151,273 in 2013

(56.5% decrease).<sup>201</sup> Nevertheless, the HOME program provides a significant source of housing funding to Baltimore.<sup>202</sup> The Department of Housing and Community Development (DHCD) is the principal agency responsible for creating the Consolidated Plan for the HOME program and the CDBG program in Baltimore city.<sup>203</sup>

The city of Baltimore’s Consolidated Plan 2010-2015 sets rankings of priorities depending on the severity of housing needs identified by the needs assessment. For example, the city recognizes that affordability is the greatest need for Baltimore residents regardless of income, tenure, or household type. Thus, the ConPlan assigns a “High Priority” need

198 See Appendix C.

199 White – Black dissimilarity indices estimate the percentage of Blacks (non-Hispanic) who have to move from their census tracts in order to have a geographic distribution similar to Whites (non-Hispanic) in the City. The dissimilarity index is ranked from 0 to 100 – the higher the index, the higher the level of segregation between the two groups. A dissimilarity index of 60 and above is considered to be very high. US2010 Discover America in a new century, available at <http://www.s4.brown.edu/us2010/segregation2010/Default.aspx>, See also Appendix B, Figure 21.

200 See Appendix A.

Baltimore City, MD has received a total of \$154,252,287 HOME funds from HUD since it became a PJ in 1992.

U.S. Dept. of Housing and Urban Development. Snapshot of HOME Program Performance – As of 3/31/13, available at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/snapshot/index.cfm?st=md>.

201 U.S. Dept. of Housing and Urban Development .Consolidated plan and continuum of care planning tool – Grantee Summary, available at <http://egis.hud.gov/cpdmaps/> (percentages based on author’s calculation).

202 City of Baltimore, Consolidated plan: July 1, 2010 – June 30, 2015, available at [http://www.baltimorehousing.org/plans\\_and\\_reports.asp](http://www.baltimorehousing.org/plans_and_reports.asp)

203 *Id.*

level for all household types (small families, large families, and elderly).<sup>204</sup> In conjunction with other federal and state programs, the ConPlan specifies that the HOME funds will “assist extremely-, very-, and low-income renter households by providing affordable rental housing.”<sup>205</sup> Nearly all of the units assisted through the variety of funds are required to be affordable for at least twenty years. Along with rental households, the Plan also assists “extremely-, very-, and low-income households in becoming homeowners.”<sup>206</sup>

Furthermore, the ConPlan lays out the projected use of HOME funds in terms of

*The goal of the city of Baltimore is to use 55% of the HOME funds to help extremely low-income renters over the five-year period of the ConPlan. However, almost 57% of the rental activities receiving funds from the HOME program will serve extremely low-income elderly population. This is in contrast to the ConPlan’s goal.*

types of households and the low-income groups it will serve. As Table 1 illustrates, the goal of the city of Baltimore is to use 55% of the HOME funds to help extremely low-income renters over the five-year period of the ConPlan. However, almost 57% of the rental activities receiving funds from the HOME program will serve extremely low-income elderly population. This is in contrast to the ConPlan’s goal.

A more recent dashboard report on completed HOME units indicates that of the total 529 units completed in 2013, 91.3% were for renters and the remaining 8.7% were for homebuyers.<sup>208</sup> As Figure 13

Table 1: Multi-family rental assistance plan in Baltimore (2010-2015) – HOME funded<sup>207</sup>

low-income Families (Renter)	Total	Small* (non-elderly)	Large (non-elderly)	Elderly	Special Needs	Future Home-owners	Projected Cost	Percentage of Total HOME Funds (5-Year)
0 – 30% of AMI (Extremely)	740	139 (19%)	10 (1%)	419 (57%)	156 (21%)	16 (2%)	\$18,693,300	55%
31 - 50% of AMI (Very)	268	122 (46%)	10 (4%)	112 (42%)	0 (0%)	24 (9%)	\$6,805,150	20%
51 - 80% of AMI (Low-Income)	304	92 (30%)	10 (3%)	105 (35%)	0 (0%)	97 (32%)	\$8,514,049	25%
Total units (HOME)	1312	353	30	636	156	137	\$34,012,499	100%

\*Small – Two to four person non-elderly, Large – five or more related persons.

204 High Priority marked projects will be funded through a variety of funds as directed by the consolidated plan. Medium priority projects will only be financed if funding becomes available. Low priority projects will be funded only when higher priority projects have been funded. *Id.* at 41 – 42.

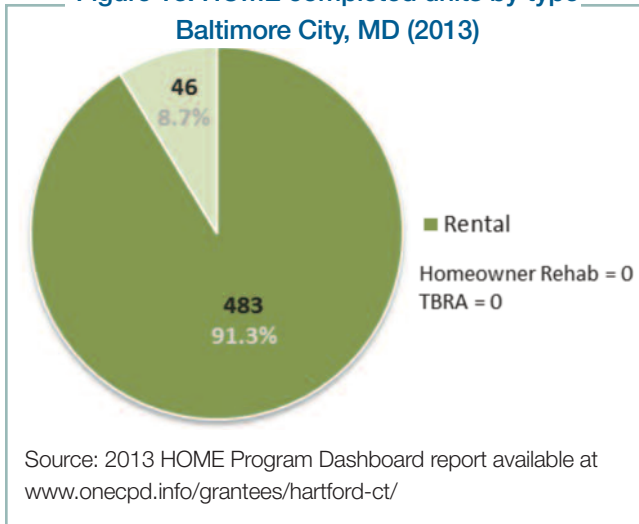
205 *Id.* at 38.

206 *Id.*

207 *Id.* at 43-44.



**Figure 13: HOME completed units by type  
Baltimore City, MD (2013)**



shows, no homeowner rehabilitation or TBRA projects were completed during this time frame. The 2013 data does not allow us to divide the units by type of households it is designed to serve (family versus elderly).<sup>209</sup> However, Baltimore City’s 2011 Analysis of Impediments found that “Of the site specific HOME activities included in the City’s 2010 Annual Action Plan, only units for income-eligible elderly and/or disabled residents are located in non-concentrated areas of the city.”<sup>210</sup>

The City’s AI recognized residential segregation was a problem in Baltimore and concluded that segregation is unlikely to be solved in the city as most of the city’s census tracts have high concentration of

*But the fact that the City has succeeded in siting units for the disabled and elderly in non-concentrated tracts, suggests that they could similarly make more of an effort to secure locations in those areas for family housing.*

racial and ethnic population.<sup>211</sup> Therefore, the AI report suggests that to achieve fair housing, a more regional approach to housing is necessary to allow more options to future movers.<sup>212</sup> In other words, the ability of the city to locate HOME assisted units in a non-minority concentrated area is severely limited by the reality that there are only a few tracts without minority concentrations within the city limits.

But the fact that the City has succeeded in siting units for the disabled and elderly in non-concentrated tracts, suggests that they could similarly make more of an effort to secure locations in those areas for family housing. Unfortunately, however, there does not appear to be a strong policy push in this direction. The AI finds that the City did not even have a written site selection policy requiring or incentivizing the siting of HOME projects in non-concentrated areas.<sup>213</sup> The Baltimore AI concludes that proposed HOME projects are

not reviewed in terms of its contribution to affirmatively furthering fair housing.<sup>214</sup>

The AI recommends that going forward “in developing policy priorities for entitlement investment in affordable housing, the City should give first consideration to the use of HOME funds for new family rental housing on sites outside of concentrated areas” and that it “prepare a written policy that encompasses the Site and Neighborhood Selection requirements at 24 CFR 983.6... that can be incorporated as part of the application review and approval process for all applicable HOME-assisted projects.”<sup>215</sup> Finally, the AI also recommends “when preparing future CAPERs, the City should

208 2013 HOME Dashboard Report – Baltimore, MD, yearly totals calculated by PRRAC staff, available at <https://www.onecpd.info/grantees/baltimore-md/>. The most recent CAPER provides the details of the HOME activities in the city of Baltimore for the year 2010 to 2011. During the 2010 program year, HOME funds were used to support 465 units. More specifically, Baltimore used HOME funds to produce 324 rental units for seniors. In terms of units for small families, 135 rental units were built using HOME funds in the 2010 program year. Most of the small families assisted by HOME rental funding are extremely low-income families. There were only 4 HOME assisted units for large families. In terms of homeownership, the HOME program assisted 34 units for small families, again assisting more units for the extremely low-income families. For large families, the HOME program assisted 4 units and 0 units for seniors.

209 We recommend that there should be a review of the locations of HOME projects co-funded with LIHTC.

210 City of Baltimore Analysis of Impediments to Fair Housing (2011) at 65 available at [http://static.baltimorehousing.org/doc/plansreports/baltimore\\_city\\_ai\\_revised\\_10.10.1160859973.pdf](http://static.baltimorehousing.org/doc/plansreports/baltimore_city_ai_revised_10.10.1160859973.pdf).

The report states that the HOME assisted units offer increased housing opportunities but fail to move families away from segregated areas.

211 *Id.* at 6. Note that, in addition to its regular AI, Baltimore City joined in a “Regional AI” in 2012.

212 *Id.*

213 *Id.* at 143.

214 *Id.* at 76.

215 *Id.* at 143.

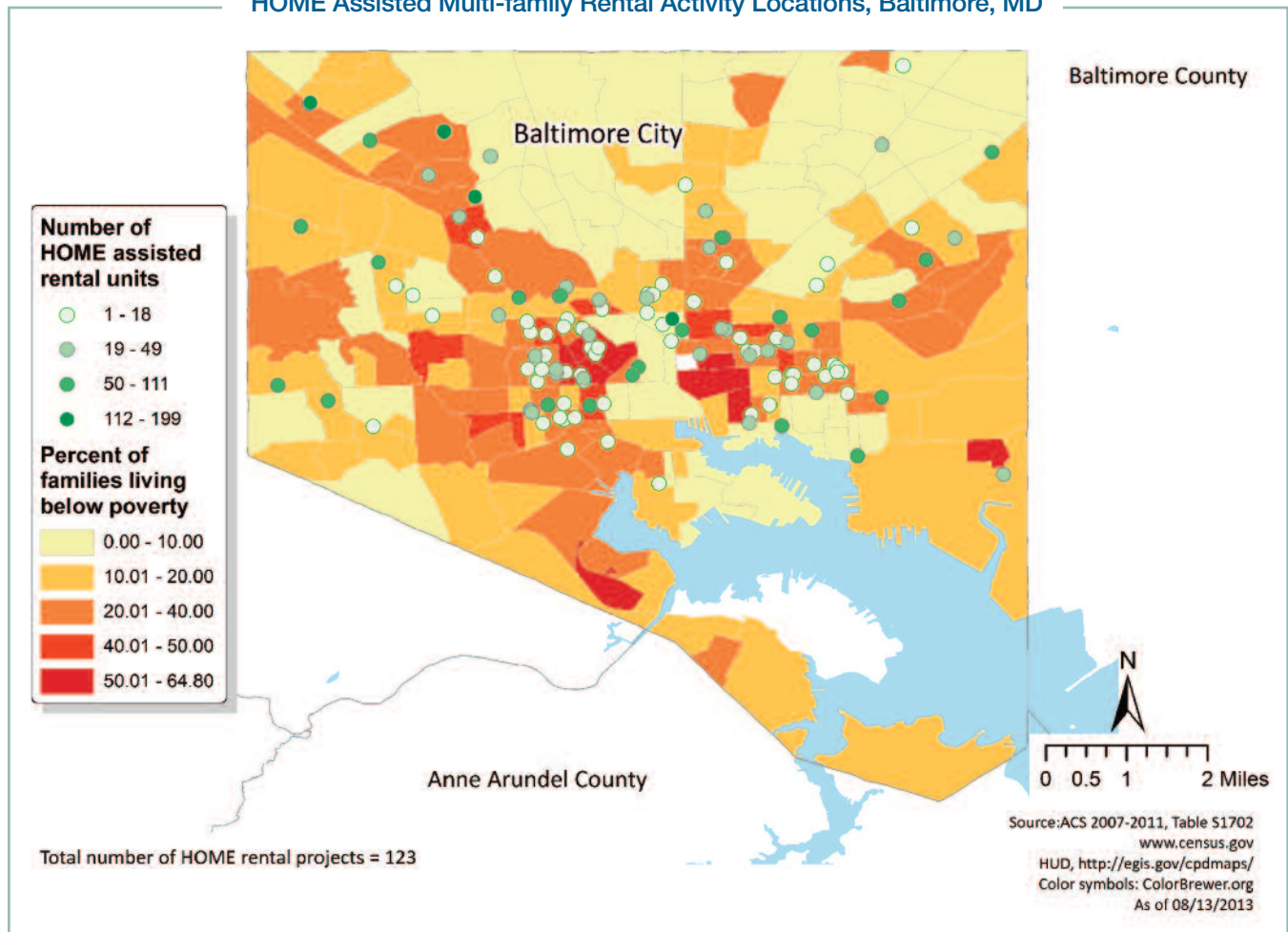
map the addresses of all new affordable housing projects financed with formula grant funds to depict their location relative to areas of racial/ethnic concentration.”<sup>216</sup>

To match the neighborhoods with the various housing and development programs and the associated public resources, Baltimore city created a typology categorizing each census block group as a result of the 2006 Comprehensive Master Plan (CMP).<sup>217</sup> The block groups are divided into five categories: competitive, emerging, stable, transitional, or distressed. The AI reports that the HOME activity sites may often be in areas that have high concentration of minority and are identified as “transitional” or “distressed.”<sup>218</sup> However, as mentioned, the AI observes that in 2010 Annual Action plan “only units for income-eligible elderly

and/or disabled residents are located in non-concentrated areas of the city.”<sup>219</sup>

The following map of HOME multifamily rental units overlaid with the census tract poverty level data illustrates the locations of the units built in Baltimore since the beginning of the program. As suggested by the city’s 2011 AI, the rental projects are overwhelmingly clustered in the census tracts that are also facing high levels of poverty. Moreover, this map shows a pattern where large percentages of families living below poverty are clustered in areas surrounding downtown and spreading out towards the eastern and western boundaries of the city. The tracts in northern Baltimore have the lowest percentage of families (less than 10%) living below poverty level, but there are only a few HOME rental units

**HOME Assisted Multi-family Rental Activity Locations, Baltimore, MD**



216 *Id.*

217 *Id.* at 62.

218 *Id.* at 63.

219 *Id.* at 65.

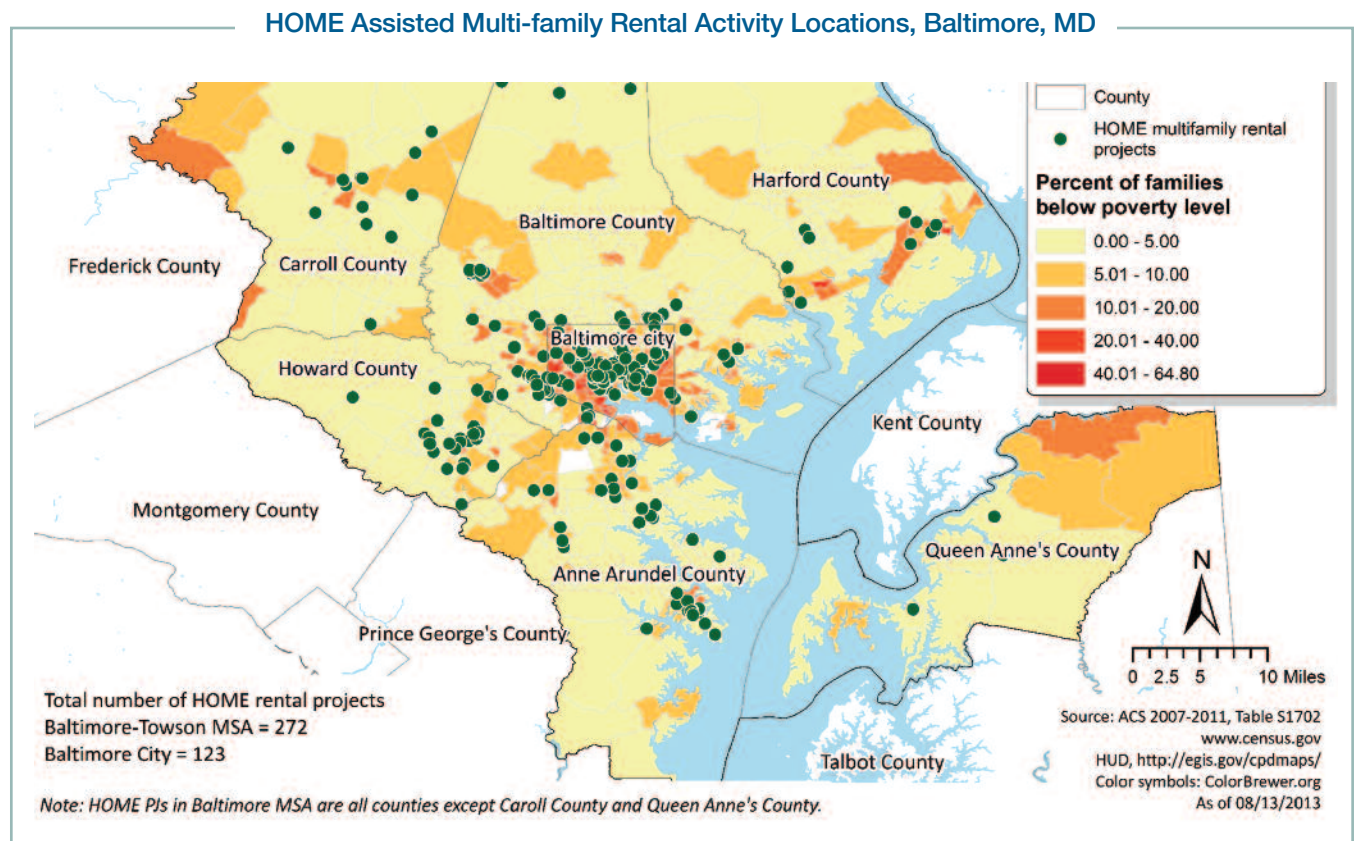
located in those tracts. Baltimore city has completed around 123 HOME assisted rental projects since participating in HOME. Figure 15 illustrates that almost 64.2% of the total 123 HOME rental units are in areas with more than 20% of families living below the poverty level. Around 32% of the HOME rental projects are in areas that have more than 30% of families living below poverty level.<sup>220</sup> Approximately 93% of the total HOME rental units are in areas that have greater than 50% minority population. Moreover, 64% of the units are in areas in Baltimore city that are in areas that have 20% or more families living below poverty and have greater than 50% minority population.

The map of the HOME rental units clearly shows that these units are highly concentrated in poorer areas of Baltimore city. The map also reveals that there are significant parts in the northern tier of the city that are low poverty as well as have low concentration of HOME rental units. More needs to be done to push for HOME multi-family rentals to be built in these low poverty areas within the city. In addition to exploring ways to place HOME rental units within

Baltimore City, the city should also engage in collaborations with the neighboring jurisdictions in the metropolitan region to expand areas of high opportunity neighborhoods in order to meet AFFH requirements.

#### f. Balance of Baltimore-Towson MSA

Baltimore city is only one of the HOME funded participating jurisdictions in the Baltimore Metropolitan area. The other counties in the Baltimore MSA area that receive HOME funds directly from the federal government are Baltimore County, Anne Arundel, Howard and Harford County. The remaining two counties, Carroll and Queen Anne's County receive HOME funds from the state of Maryland. The total population of the Baltimore MSA, according to the 2008-2012 ACS estimates is 2,715,650.<sup>221</sup> Almost 60% of the total population in the metropolitan area is non-Hispanic White and 28.4% non-Hispanic Blacks. A comparison the distribution of all the HOME multifamily rental projects since the start of the HOME program across the Baltimore-Towson metro region shows that 123 of the



220 See Appendix D.

221 See Appendix C.



total 272 projects or 45% are located in Baltimore city. All other rental projects are scattered across Baltimore County, Howard County, Harford County, Anne Arundel County, Carroll County, with a few on Queen Anne's County.

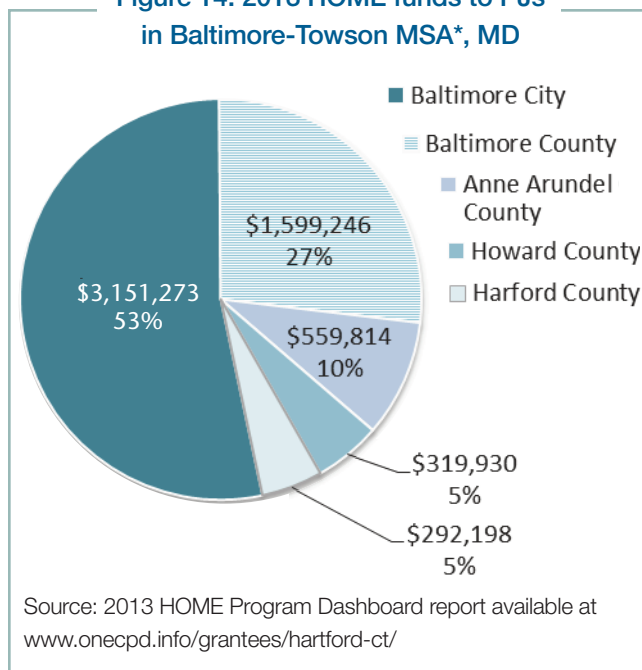
In 2013, Baltimore city received almost 53% of the total HOME funds disbursed in the larger Baltimore-Towson metropolitan region.<sup>222</sup> As shown in the chart below, Baltimore County received the next largest amount or 27% of the total HOME funds from HUD in 2013. Anne Arundel County received \$519,246 or 10%. Similarly, Howard, and Harford County received \$319,930 and \$292,198 respectively, each making up 5% of the total funds received in the metropolitan area. Baltimore city received the largest share of the HOME funds due to the way different socioeconomic and housing variables are weighted in the formula that guides the allocation of HOME funds. The regional AI released in 2012 characterizes the current inter-governmental efforts to achieve fair housing as “loosely

cooperative” and “fragmented” in its approach.<sup>223</sup> The regional AI indicates that each community is operating in its own silo to meet its specific local needs. Moreover, the 2012 regional AI argues that almost 53% of the 2008 subsidized private housing is located in Baltimore city, mostly in areas that have a higher than 70% Black population. The report further states that the other 47% of the affordable housing in other counties is located in areas of high minority concentration. The report goes on to say that the units that are in “non-impacted” areas of opportunity are mostly affordable housing for seniors and persons with disabilities. However, there is not enough data available on the HOME program specifically to assess whether particular developments are set aside for family or elderly housing.

As Figure 15 illustrates, the Baltimore-Towson MSA (excluding the city of Baltimore) has a lower level of concentration of HOME multifamily rental units in areas with more than 20% families living below poverty and more than 50% minority populations when compared to Baltimore city (note however, that the data does not permit us to identify which of these developments is targeted to elderly residents, as opposed to families). Excluding the HOME projects in Baltimore city, the Baltimore-Towson MSA has 149 HOME rental projects. Among these projects, 5% are located in >20% poverty areas and 34% are in areas with greater than 50% minority concentration. Only one project in the MSA is in an area with greater than 30% of the families living below poverty level.<sup>224</sup> The higher concentration of HOME projects in higher minority areas outside the city may be partly attributed to the methods in which projects are chosen. For example, Anne Arundel County's siting of HOME projects in revitalizing neighborhoods has resulted in its concentration in higher minority neighborhoods.<sup>225</sup> Also, Baltimore County does not give preference to HOME and CDGB projects in areas of opportunity during the selection process.<sup>226</sup>

The Baltimore-Towson metropolitan area, excluding the city, only has six census tracts out of 483 where 20% or more

**Figure 14: 2013 HOME funds to PJs in Baltimore-Towson MSA\*, MD**



222 Grantee Summary available at <http://egis.hud.gov/cpdm/aps/> (percentages calculated by author).

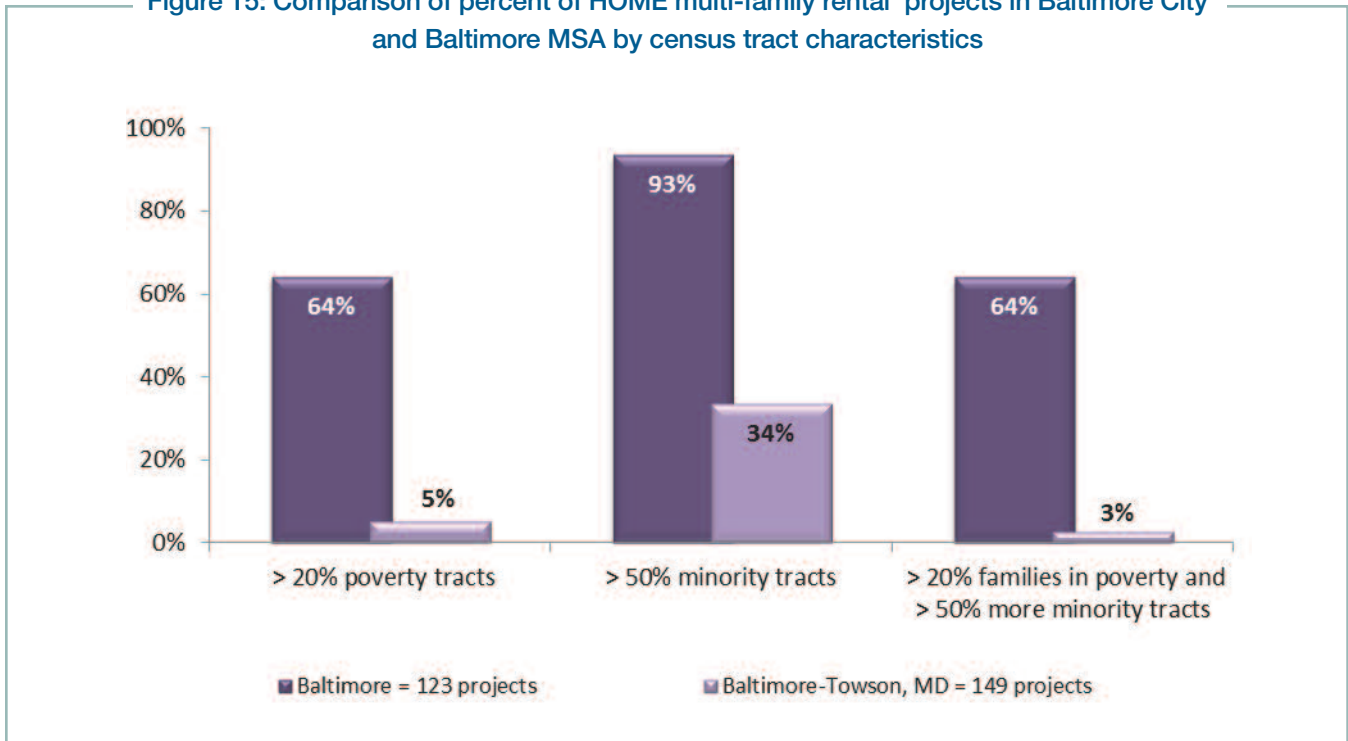
223 Analysis of Impediments to Fair Housing Choice, Baltimore Metropolitan Region: Regional Section, at 5 (February 2012), available at [http://www.acdsinc.org/html/publications\\_01.htm](http://www.acdsinc.org/html/publications_01.htm).

224 See Appendix D.

225 Analysis of Impediments to Fair Housing Choices – Anne Arundel County at 53, available at [http://www.acdsinc.org/html/publications\\_01.htm](http://www.acdsinc.org/html/publications_01.htm).

226 Analysis of Impediments to Fair Housing Choices - Baltimore County, available at <http://www.baltimorecountymd.gov/Agencies/planning/publication-smaps/>.

**Figure 15: Comparison of percent of HOME multi-family rental projects in Baltimore City and Baltimore MSA by census tract characteristics**



families are living below the poverty level.<sup>227</sup> Comparatively, in Baltimore city almost 75 out of 200 (38%) census tracts have 20% or more families living below poverty level. These lower poverty areas of the region would be the best locations for future HOME development.

Baltimore city’s Analysis of Impediments clearly identifies the major challenges the city faces in meeting its AFFH mandate. Furthermore, it also outlines practical solutions that the city can undertake to overcome those challenges.

However, the regional AI and the analysis of the map of Baltimore-Towson MSA indicates that Baltimore city and the metro area may be able to find a viable solution regarding the siting of HOME projects through regional collaboration and partnership. Only then can the region begin to mitigate the problem of concentrating HOME rental units in areas with higher levels of poverty and higher minority population to meet its AFFH requirements.

227 PRRAC staff calculation based on 2007-2011 American Community Survey (Table S1702).





## CHAPTER IV

# Areas of Improvement in the HOME Program

After reviewing the HOME Program statute, regulations, and other relevant materials from the selected local participating jurisdictions and their associated MSA, the authors created the following list of program critiques and best practices. The following critiques identify areas where the HOME program is failing to meet its AFFH obligation and offers suggestions on how to improve these failing areas. When available, these suggestions also include best practices we think can be replicated by other PJs facing similar challenges.

### 1. Changing the way allocations are made to Participating Jurisdictions

HOME funds are allocated to PJs based on an outdated formula that prioritizes poverty over opportunity. Currently, the most money is awarded by formula to jurisdiction with high rates of poverty and need. As shown in Hartford, Milwaukee and Baltimore the HOME allocation formula creates clustering of HOME units in census tracts that have high rates of poverty and minority concentrations. The combination of the allocation formula and the requirement that PJs use HOME funds within their jurisdiction creates this clustering effect. The six factors that make up the formula should be changed to focus on creating regional housing opportunities for families in greatest need of HOME housing resources. One way of accomplishing this goal would be to gradually shift the share of funds from local jurisdictions to the state agency level.

### 2. Making it easier for PJs to site HOME units outside their boundaries

In our study areas, the PJs do not appear to collaborate with their neighbors, and thus spend their HOME dollars on rental, homebuyer, and home-owner activities located within their respective boundaries. For some urban PJs like Milwaukee, Hartford, and Baltimore, spending HOME

funds within their jurisdiction presents a unique and persistent problem because most of the census tracts in the PJ are low-opportunity. Our analysis shows that much of the site-specific HOME activities are often also concentrated in areas of high poverty and/or high racial and ethnic concentration. This implies that locations of the affordable HOME units do not affirmatively further fair housing and the HOME program may be perpetuating segregation. The HOME program needs to strongly encourage a regional focus in order for these PJs to mitigate poverty concentration and residential segregation. We acknowledge in some metropolitan areas there may be a need to incentivize suburban participation in order to site HOME units in opportunity areas.

- a. HUD should create incentives for PJs to form consortia, engage in joint projects, and mutually beneficial partnerships

To expand the choices of neighborhoods, HUD needs to encourage highly segregated PJs to work with surrounding jurisdictions that have high opportunity areas. HUD can encourage PJs to create joint HOME projects with the surrounding jurisdictions, or form consortia with the surrounding jurisdictions to expand siting of HOME rental and homeownership units. As the maps in our analysis shows, the metropolitan areas of the three cities we have looked at have much lower concentration of HOME multifamily rental units. Since affordable housing needs transcend jurisdictional boundaries, it makes sense to devise solutions that have broader implications. A regional solution to affirmatively furthering fair housing also aligns well with HUD's regional approach in the proposed AFFH rule.<sup>228</sup>

- b. HUD should strongly promote regional AIs and Assessments of Fair Housing

228 U.S. Dept. of Housing and Urban Development, Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43711 and 43718 (July 19, 2013) (AFFH Proposed rule) available at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-16751.pdf>.

Our review indicates that participating jurisdictions could greatly benefit from producing a regional analysis of impediments to fair housing. Among our study areas, only the Baltimore metro region has produced a regional AI. The Baltimore metro region, in its most recent regional AI, highlights the lack of collaboration among the jurisdictions in the metro region.<sup>229</sup> Studying the fair housing challenges regionally allows the metro region to have a clearer picture of what a regional solution to providing greater housing opportunity to low-income families would look like. The proposed AFFH rule recommends, but does not require, two or more program participants to submit a joint AFH that will “evaluate fair housing challenges, issues, and determinants from a regional perspective.”<sup>230</sup> There needs to be a stronger message from HUD to the participating jurisdictions to come together and produce these regional analyses to better tackle their fair housing challenges.

### 3. Ensuring that the selected HOME projects are affirmatively furthering fair housing

This review found that the goal of affirmatively furthering fair housing was not prioritized and highlighted in the Consolidated Plans of the selected PJs. As a result, the PJs do not clearly set out strategies to avoid locating affordable housing in highly segregated neighborhoods. The PJs that receive HOME funding are also required to adhere to the “Site and Neighborhood standards” along with AFFH. Taking proactive steps to promote a larger variety of housing choices to low-income families may help in meeting both requirements.

#### a. PJs should take steps to give priority to HOME projects that are planned in low poverty neighborhoods

One way of ensuring that HOME activities are affirmatively furthering fair housing may be to use fair housing rules as one of the selection criteria for prioritizing and selecting HOME projects to be funded. For example, even though the city of Baltimore recognizes the problem of racial/ethnic segregation and poverty concentration in their analysis of impediments, they agree that there are no current practices which “filter” activities that affirmatively further fair housing.<sup>231</sup> In a highly segregated area, there is a greater chance that a lack of attention to siting during planning may place affordable housing in low-opportunity areas. Introducing fair housing guidelines earlier in the process will encourage applicants to think of their location choices. This can include using the mapping tools available on the HUD website when applying for HOME funds.<sup>232</sup>

#### b. Use measures and indices of opportunity to determine areas where HOME units should be or should not be placed

Identifying sites in opportunity areas to build affordable housing units is one of the key steps through which communities can expand affordable housing choices for low-income families. In all the jurisdictions, profiled HOME units were often placed in high poverty census tracts.

Few of the study areas in our review tried to use strategies to identify places of opportunity in order to avoid concentrating HOME units in segregated and poor neighborhoods.<sup>233</sup> For example, to place affordable housing in high opportunity neighborhoods, the city of Baltimore has created a typology dividing its census block groups into five different categories: competitive, emerging, stable, transitional, or distressed.<sup>234</sup> Giving priority to HOME activities in good

229 Baltimore has a federally recognized metropolitan level planning organization called the Baltimore Metropolitan Council. The regional AI states that although the council brings together elected officials from the AI jurisdictions, it has failed to implement any substantial regional housing policy. See Analysis of Impediments to Fair Housing Choice, Baltimore Metropolitan Region (February 2012) at 65, *available at* [http://www.acdsinc.org/html/publications\\_01.htm](http://www.acdsinc.org/html/publications_01.htm).

230 2013 Affirmatively Furthering Fair Housing (Proposed rule) at 43718. The single AFH will follow objectives similar to a jurisdiction’s local AFH but it will encompass the region. The proposed rule states that the regional AFH need not be contiguous and may even traverse state boundaries.

231 Baltimore 2011 Analysis of Impediment, *supra* note 218 at 137.

232 See U.S. Department of Housing and Urban Development, Prototype Geospatial tool (Proposed AFFH rule), *available at* [http://www.huduser.org/portal/affht\\_pt.html#dataTool-tab](http://www.huduser.org/portal/affht_pt.html#dataTool-tab).

233 Jurisdictions can also promote and incentivize developers to invest HOME funds in opportunity neighborhoods. For instance, Connecticut has incorporated the strategies that provide placed based resources and housing mobility strategies within its consolidated plan. Some of the placed based strategies are ideal for adoption by other jurisdictions. These strategies focus on strengthening the resources in the community for residents and providing affordable housing for residents. Connecticut has named this development strategy responsible development (includes economic, social and environmental development). Connecticut gives points to private developers based on a livability and sustainability index. To promote placed based strategies, Connecticut gives priority to projects sited in “. . . areas within built-up lands, existing commercial properties, and brownfields.” Additionally, Connecticut

neighborhoods should assist in affirmatively furthering fair housing in that jurisdiction.

#### 4. Addressing inconsistencies in reporting data across jurisdictions

In order to hold PJs to a greater degree of accountability for their fair and affordable housing strategies, we recommend that HUD significantly augment annual reporting regulations. During our review we found inconsistencies with all HUD reports, but the inconsistencies among CAPERs created the most restrictions for this report because we were unable to explore some of our initial theories on what type of rental housing was created. Sub-regulatory guidance provides a standardized model for CAPERs.<sup>235</sup>

Despite HUD's attempt to streamline CAPER reporting, the regulations are generally inadequate because they only recommend (rather than mandate) the reporting of data that would facilitate true scrutiny of PJs' efforts to affirmatively further fair housing. Notably, PJs are not currently required to publically disclose the geographic distribution of their HOME units by tenure type, household type, unit type, or race/ethnicity. Similarly, PJs are not required to describe the extent to which HOME units are sited in opportunity areas that would integrate high-need households into their broader communities. To ensure that PJs are affirmatively furthering fair housing rather than perpetuating existing patterns of economic and racial segregation, mapping data should be in the CAPER to describe the geographic distribution of HOME units.

Another way to disseminate the occupancy data of HOME is by including the information in HUD's "Picture of Subsidized Households." This dataset is designed to provide occupancy data on HUD assisted multifamily units but does not have data on HOME assisted units.

In addition to improving the CAPER system, HUD should integrate HOME occupancy data into its "Picture of

Subsidized Households" database, which currently includes occupancy data for every HUD assisted housing program except HOME.

Additionally, our review shows that PJs are inconsistent in reporting even required data. For example, PJs generally do not report the income categories of HOME-assisted households.<sup>236</sup> Similarly, supplementary IDIS reports that disclose the tenure type of HOME units were often left substantially incomplete or even omitted altogether.<sup>237</sup> Again, it is difficult for advocates to discern whether PJs are making good-faith attempts to assist high-need populations without access to this type of textured data.

#### 5. Integrating the Analysis of impediments into the consolidated plan

The AI does not fulfill the AFFH mandate as it is currently implemented. AIs approved by HUD are often substantially incomplete or incorporate only a cursory analysis of fair housing issues. For example, our review indicated that Hartford's AI was not comprehensive enough to inform their consolidated plan. Baltimore's 2011 AI presented some good solutions to overcome its impediments, but since it was published after the 2010-2015 Consolidated Plan, it did not guide the Plan.<sup>238</sup> Finally, Milwaukee's AI could not be meaningfully incorporated in to our evaluation because it was last updated almost ten years ago.

These unfortunate realities are at least partially attributable to the guidance established by HUD, which currently does not link AIs to the broader Consolidated Plan approval process. This lack of relevance promotes a tendency among PJs to view AIs as regulatory formalities rather than as central and meaningful components of their affordable housing plans.

HUD is on its way to make some significant changes to the AI. The proposed AFFH rule attempts to strengthen the connection between the AFH and the consolidated

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promotes transit oriented development by giving preference to projects that integrate transit-oriented development. See 2010-15 Connecticut's Consolidated Plan for Fair Housing and Community Development at 149.

234 Baltimore 2011 Analysis of Impediments, *supra* note 218 at 62. As mentioned earlier, the city of Baltimore has started to prioritize and give additional points to HOME activities that are located in neighborhoods categorized as competitive, emerging, or stable. These extra points will help in the ranking of the proposed HOME projects and give advantage to these projects during the competitive selection process.

235 See CPD's Guide for Consolidated Plan Performance Report Narratives, available at <http://www.hud.gov/offices/cpd/about/conplan/toolsandguidance>.

236 Required in CAPER HOME Program Narrative. See CPD's Guide for Consolidated Plan Performance Report Narratives, *supra* note 227 at 5.

237 Required in HOME low-income Benefit Report (C04PR16). See CPD-IDIS Reference Manual Appendix D, at 108.

238 The Baltimore consolidated plan mentions that it will be amended if AI reveals impediments that is not addressed in the current Consolidated Plan.

plan.<sup>239</sup> HUD needs to ensure that much of the proposed AFFH that ties the AFH to consolidated plan stays in the final rule and is strongly enforced in order to have an impact on current lax practices.

## 6. Addressing local flexibility

One of the HOME's major program features is flexibility. PJs have the flexibility to spend as much of their HOME dollars on either homeownership or rental activities according to their needs. As our report has shown, Hartford identified homeownership as their first priority and developing affordable rental units as their second priority in 2013. In prior years, Hartford had prioritized low-income rental housing.

Flexibility without strong fair housing oversight can lead to development of deeply income-targeted rental housing in high poverty neighborhoods, or avoidance of rental housing in lower poverty neighborhoods, with a preference for moderate income home ownership units.

On the other hand, flexibility enables a city like Hartford to avoid continued placement of low-income rental housing in an already crowded city. Flexibility also can give the jurisdiction to site units in areas with access to transportation and good schools, or can encourage partnerships or consortia with neighboring jurisdictions or form a consortium.

If HUD wants to continue to promote local discretion and flexibility in the program, it will need to be much more explicit in communicating its fair housing expectations, and more vigilant in monitoring existing fair housing obligations.

## 7. Partnerships and Leveraging

HOME program requirements for establishing partnerships with local non-profits and leveraging other locally available funding<sup>240</sup> are potentially problematic from a fair housing perspective, since local partners and municipal funding matches are more likely to be found in cities – and neighborhoods – that already have a large share of housing for low-income families.

## Conclusion

The HOME Investment Partnerships Program is an essential element in HUD's array of affordable housing programs for low and moderate income individuals and families. But it lacks strong fair housing guidance.

Our report focused on the administration of the HOME program in the participating jurisdictions (PJ) of Baltimore, Milwaukee, and Hartford, and their respective regions. In the selected PJs, we found clustering of HOME rental units in census tracts with high poverty and high minority concentrations. We identified several HOME program design features that contribute to the program's failure to meet its affirmatively furthering fair housing obligation, and we offered the following recommendations to address the flaws in the HOME program:

- ❖ Change the allocation formula used to select Participating Jurisdictions
- ❖ Stronger emphasis on regional siting of HOME units
- ❖ PJs should have mechanisms to ensure that HOME projects are affirmatively furthering fair housing
- ❖ Require more consistent CAPER reporting that includes occupancy (elderly vs. family), income, family size, race and ethnicity
- ❖ Ensure that the new AFFH Rule is integrated with the Consolidated Plan and require specific performance goals
- ❖ Monitor that flexibility in the HOME program does not overshadow the fair housing obligations of the community

Housing segregation is driven by a complex mix of public and private policies and actions. As PRRAC's work has shown, government administration of assisted housing programs is just one of the factors that contribute to metropolitan segregation. The federal HOME program is a relatively small program, and cannot solve the problem on its own, but at the very least, it should not be contributing to segregation.

239 2013 Affirmatively Furthering Fair Housing (Proposed rule), *supra* note 220 at 43723. It states that jurisdictions participating in the HOME program must also submit the AFH to HUD. The proposed AFFH rule seeks to more fully incorporate fair housing concerns in to the Consolidated Plans. The AFH submission requirement states that "An accepted AFH, or a portion thereof, is a precondition for approval of a consolidated plan." The AFFH rule, as proposed, provides data tools for the grantees to use to help them conduct their fair housing analysis, which will hopefully produce better analysis.

240 24 C.F.R. § 92.201(a)(2).



## APPENDIX A

# The HOME Program Grantee Summary<sup>241</sup>

HOME	Connecticut	Hartford City	New Britain
Total HOME allocation <sup>242</sup>	\$228,134,388	\$44,021,824	\$14,683,591
Annual grants			
2009	\$13,358,763	\$2,066,672	\$773,744
2010	\$13,342,837	\$2,052,213	\$768,291
2011	\$11,717,789	\$1,811,188	\$678,097
2012	\$6,756,442	\$1,265,798	\$494,685
2013	\$6,684,554	\$1,214,161	\$519,401

Participating Jurisdictions: Bridgeport, Hartford\*, New Britain\*, New Haven, Stamford, Waterbury

HOME	Wisconsin	Milwaukee City	Milwaukee County Consortium	Waukesha County Consortium
Total HOME allocation	\$266,720,105	\$151,986,776	\$23,413,399	\$20,699,092
Annual grants				
2009	\$13,361,145	\$6,927,431	\$1,302,481	\$1,491,311
2010	\$13,314,336	\$6,891,780	\$1,292,417	\$1,476,615
2011	\$11,707,267	\$6,091,162	\$1,143,939	\$1,297,244
2012	\$8,425,632	\$4,201,353	\$905,944	\$1,047,337
2013	\$7,926,750	\$4,412,594	\$876,106	\$1,063,811

Participating Jurisdictions: Dane County, Eau Claire, Green Bay, Janesville Consortium, Kenosha, La Crosse, Madison, Milwaukee\*, Milwaukee County Consortium, Racine, Waukesha County Consortium

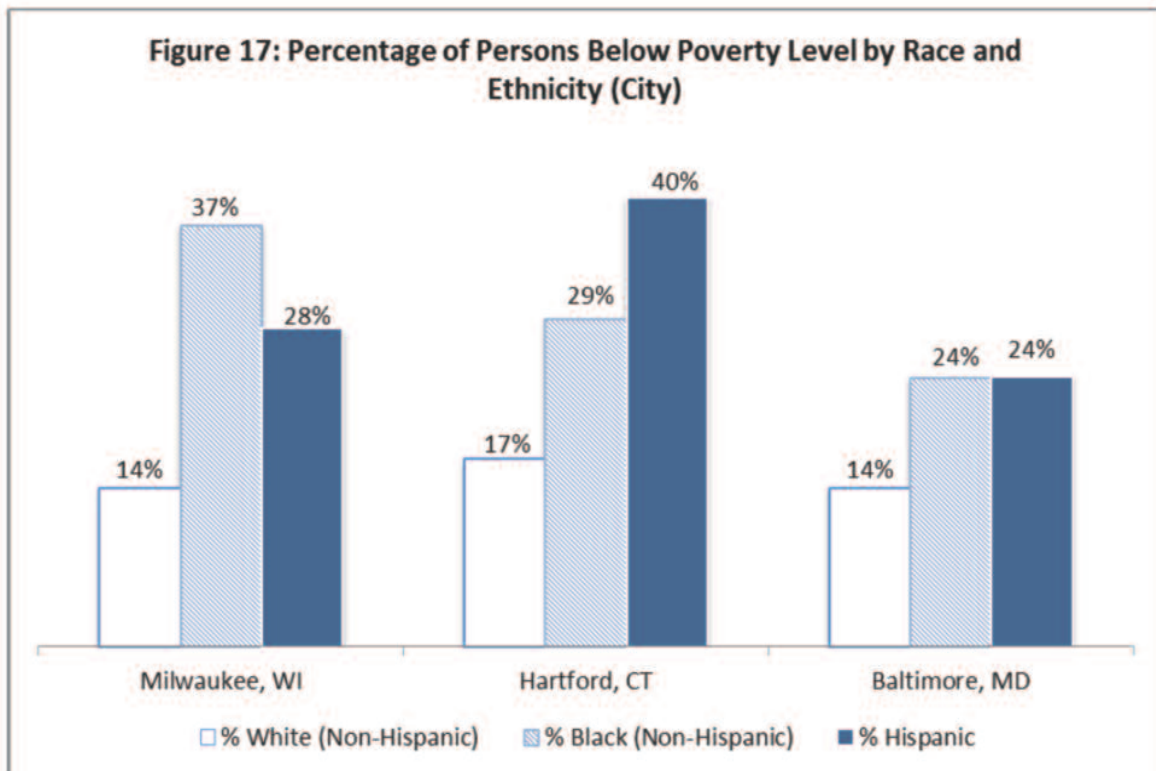
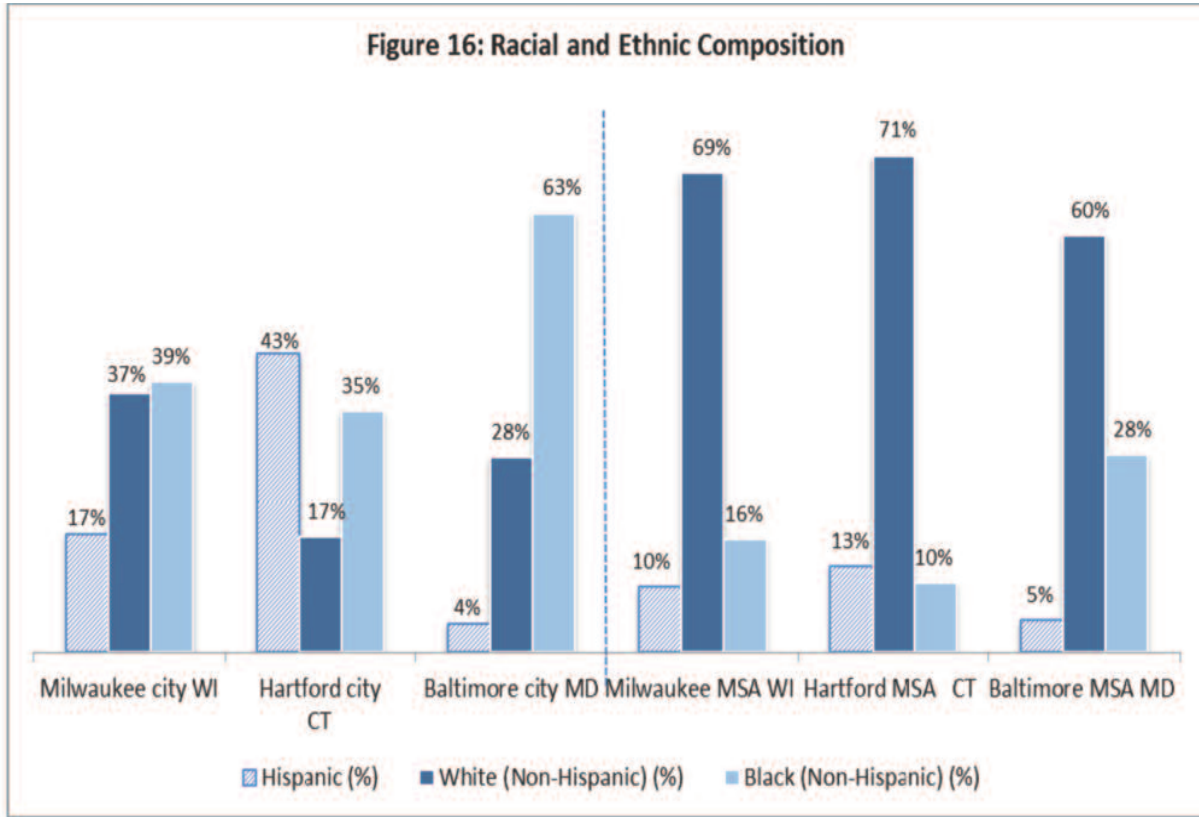
HOME	Maryland	Baltimore City	Baltimore County	Howard County	Harford County	Anne Arundel County
Total HOME allocation	\$146,740,357	\$155,997,610	\$47,561,203	\$5,183,990	\$8,061,394	\$18,227,883
Annual grants						
2009	\$8,034,276	\$7,242,818	\$2,665,828	\$545,847	\$536,192	\$947,575
2010	\$8,046,230	\$7,219,201	\$2,652,980	\$542,894	\$533,796	\$943,086
2011	\$7,100,628	\$6,369,945	\$2,341,612	\$479,222	\$470,983	\$830,264
2012	\$4,093,567	\$3,158,747	\$1,608,146	\$311,508	\$329,256	\$569,043
2013	\$3,920,615	\$3,151,273	\$1,599,246	\$319,930	\$292,198	\$559,814

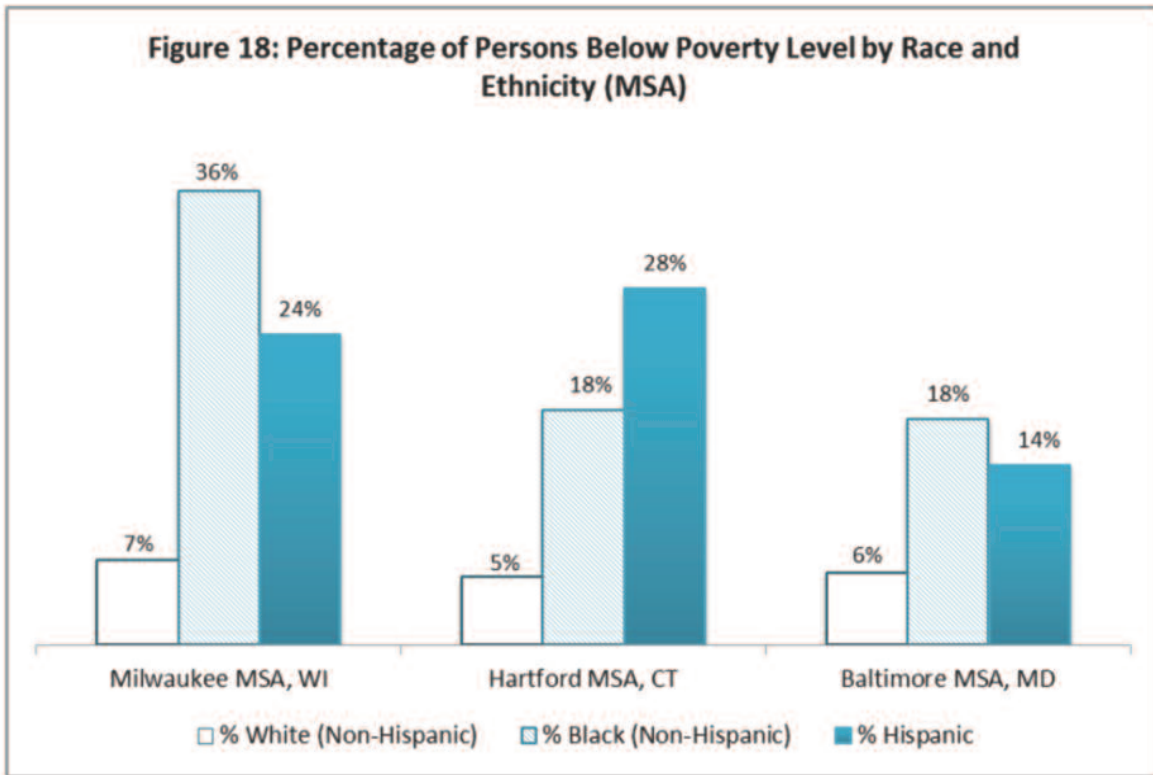
Participating Jurisdictions: Anne Arundel County, Baltimore County, Harford County, Howard County, Montgomery County, Prince George's County, and Baltimore City\*

241 Grantee Summary available at <http://egis.hud.gov/cpdmaps/>

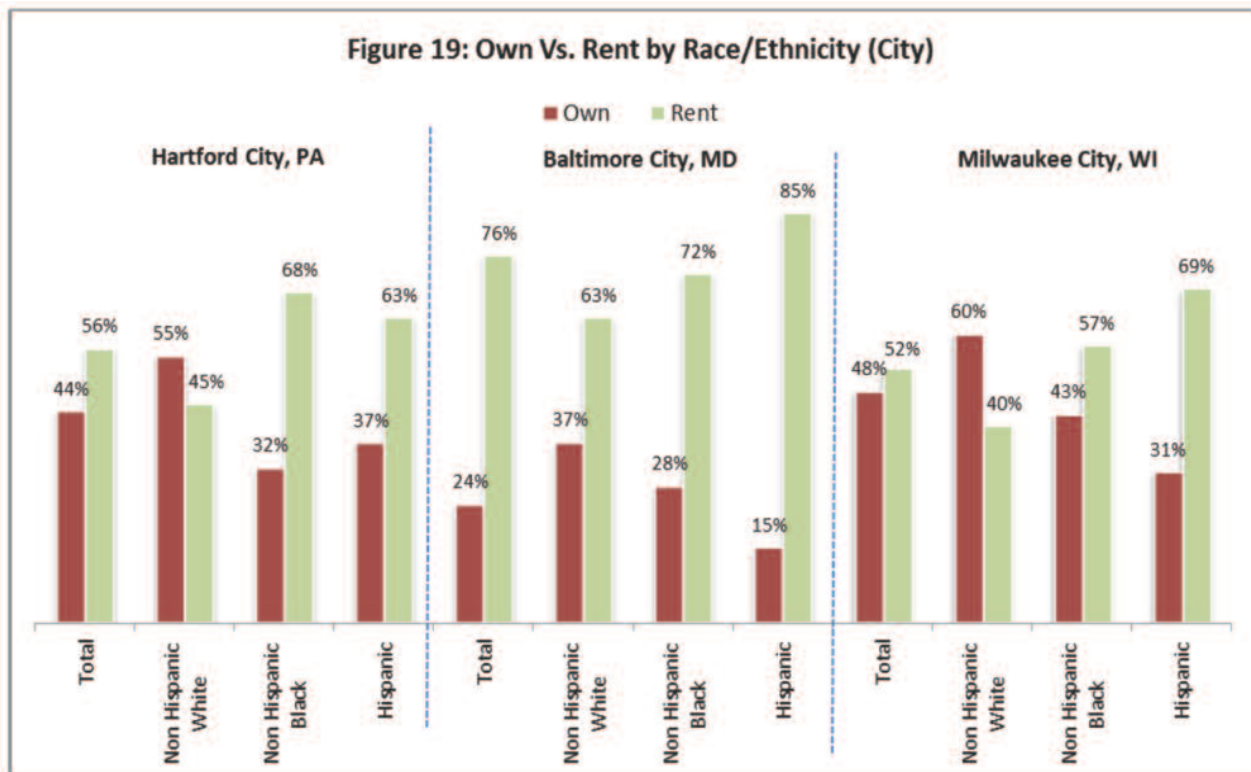
242 All total HOME allocation show the cumulative funds received by the PJ since the state of the program to 9/1331/2013

# Appendix B

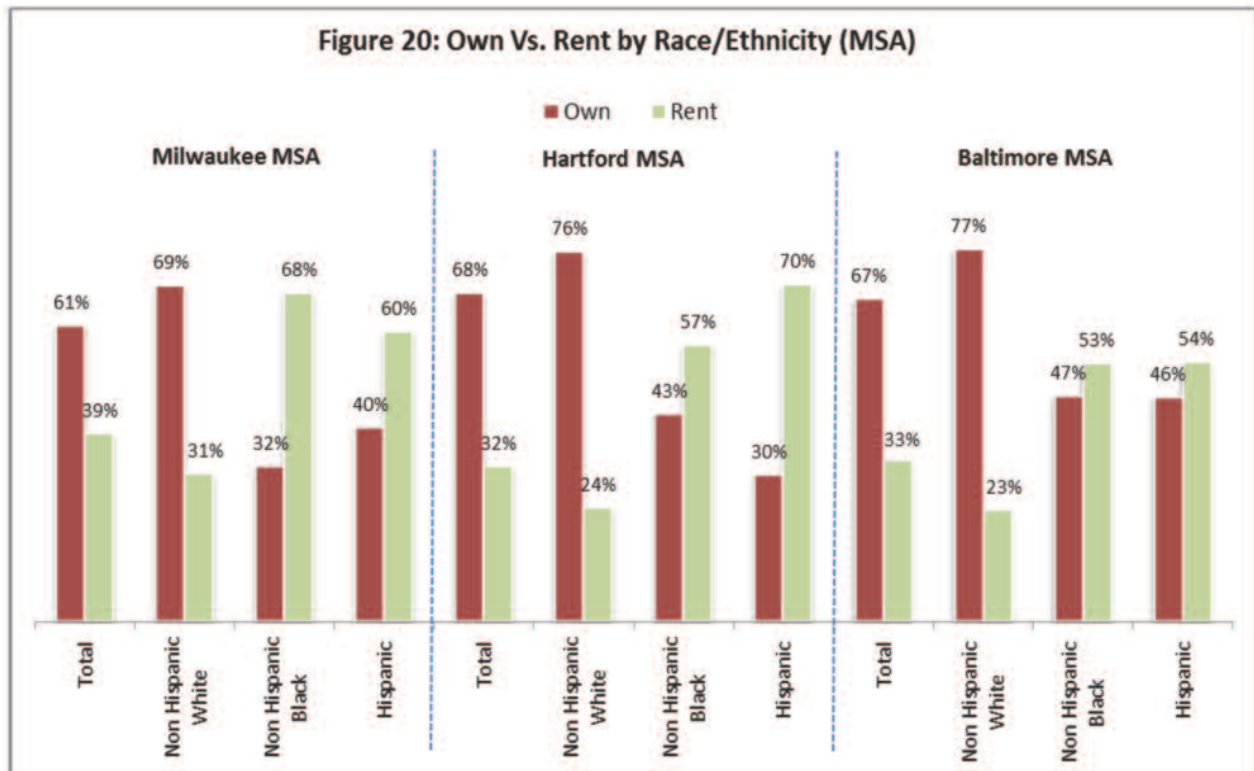




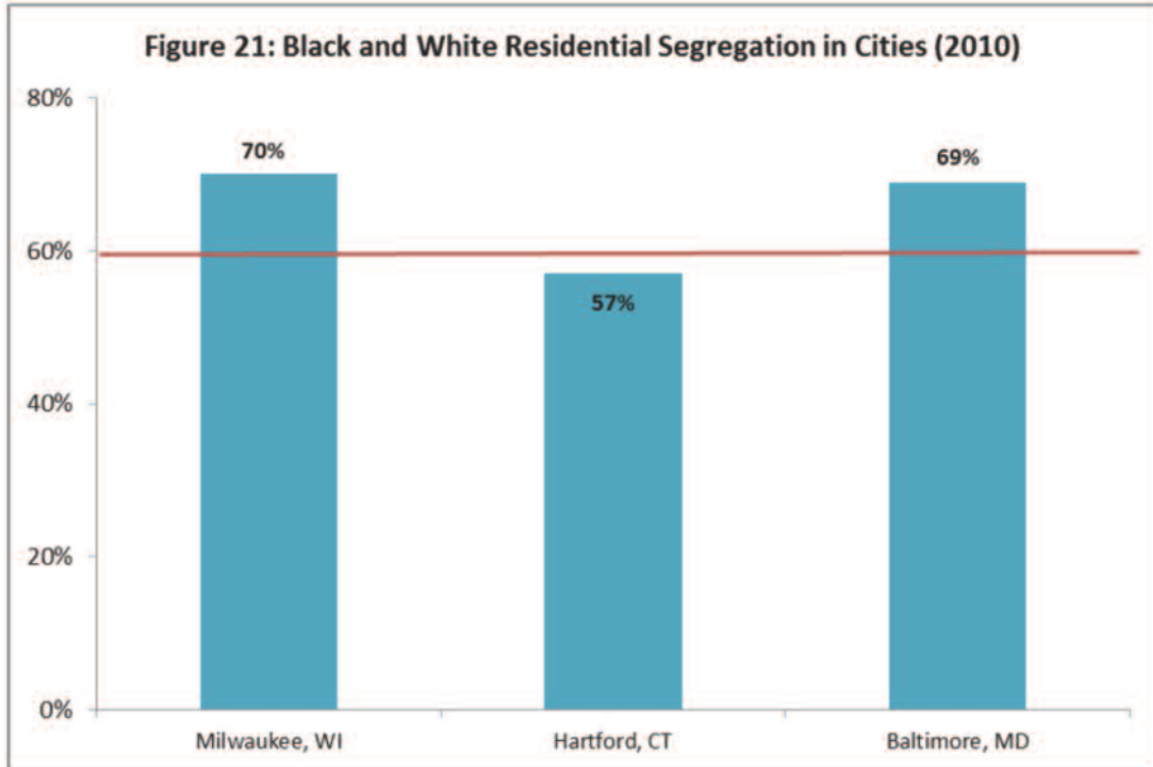
Source: Figure 17 and 18, American Community Survey 5 year estimates (2006-2010), Table B17001

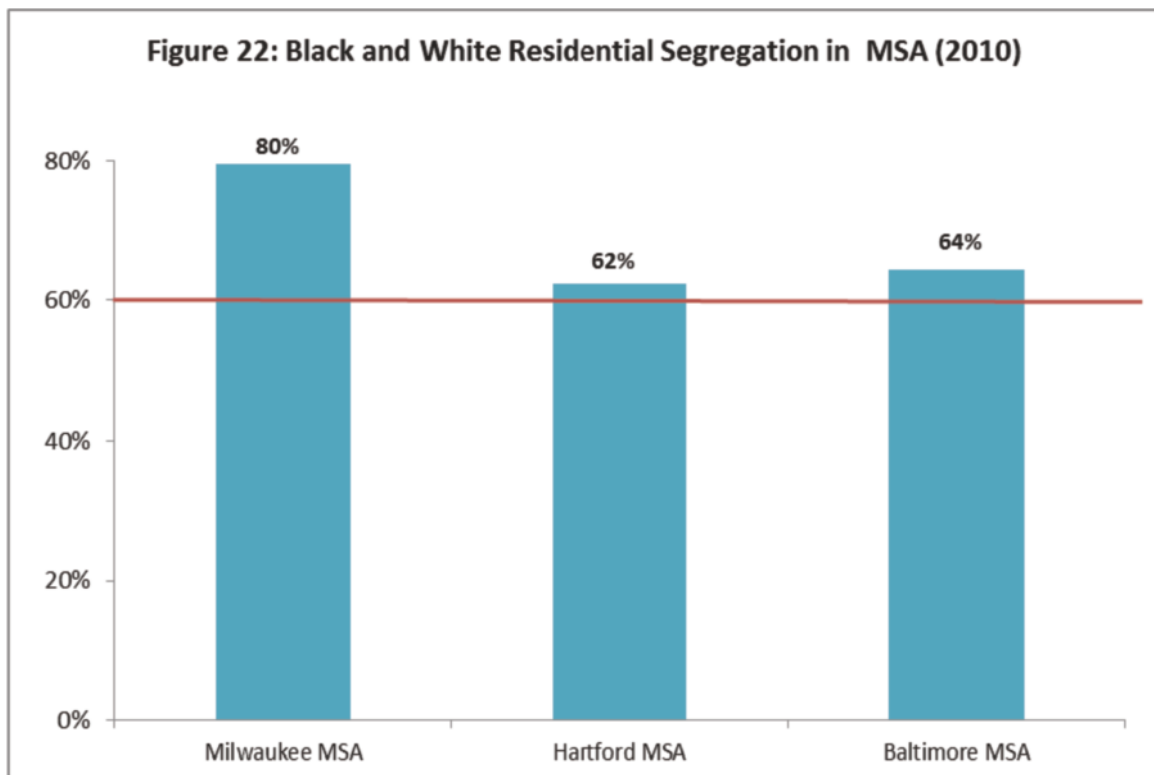


Source: Decennial Census 2010, Summary File 2, www. census.gov



Source: Decennial Census 2010, Summary File 2, [www.census.gov](http://www.census.gov)





Source: American Communities Project, Decennial census 2010, available at <http://www.s4.brown.edu/us2010/segregation2010/Default.aspx>

Definition: Degree of segregation is measured by calculating the *Index of Dissimilarity* and shows the extent to which Blacks are distributed in reference to the distribution of Whites across census tracts in the city or the state. The measure ranges from 0 to 100, with higher values indicating higher levels of segregation. Here, a value of 57% means that 57% of Blacks need to move to be distributed like Whites in Hartford, CT. According to American Communities project, a value of greater than 60% is very high degree of segregation. Similarly, a value between 40% and 50% is moderately segregated, and a value of 30% or below denotes low levels of segregation.



# APPENDIX C

## Population Profile of the Study Areas (2012)

Geography	Connecticut	Maryland	Wisconsin	Baltimore city, MD	Hartford city, CT	Milwaukee city, WI	Baltimore MSA, MD	Hartford MSA, CT	Milwaukee MSA, WI
<b>RACE AND ETHNICITY</b>									
Total Population	3,572,213	5,785,496	5,687,219	620,644	124,879	594,328	2,715,650	1,211,280	1,554,593
Hispanic or Latino (any race) (%)	13.4%	8.2	5.9	4.1	43	17.1	4.6	12.5	9.5
Non-Hispanic White (%)	71.2	54.7	83.3	28	16.7	37.4	60	71.4	69
Non-Hispanic Black (%)	9.3	29	6.1	63.2	34.8	39	28.4	10	16.4
<b>ECONOMIC CHARACTERISTICS</b>									
Median household income	69519	72999	52627	40803	28931	35823	68616	68410	53966
Individuals below poverty level (%)	10	9.4	12.5	23.4	33.9	28.3	10.6	10.2	14.6
<b>HOUSING CHARACTERISTICS</b>									
Total housing units	1485445	2378932	2620401	296437	54182	258284	1132378	506310	669098
Occupied housing units	1360184	2138806	2286339	240630	45895	229555	1026048	470385	618680
Owner-occupied (%)	68.3	68.1	68.6	48.8	24.7	44.5	67.2	68.5	61.7
Renter-occupied (%)	31.7	31.9	31.4	51.2	75.3	55.5	32.8	31.5	38.3
Median value of owner occupied units (dollars)	285900	304900	169000	161300	178300	134400	289400	255400	202800
Median gross rent (dollars)	1044	1172	749	909	855	768	1100	970	804
<b>EDUCATION</b>									
High school graduate or higher (%)	89	88.5	90.2	79.6	68.6	80.8	88.5	89.1	89.4
Bachelor's degree or higher (%)	36.2	36.3	26.4	26.1	14.8	21.7	35.5	35.3	31.7
<b>FOREIGN BORN POPULATION</b>									
Foreign born (%)	13.5	13.8	4.6	7.4	22	10	9.1	12.6	6.9
Language other than English spoken at home (%)	21.2	16.5	8.6	8.9	48.3	19.3	11.4	20.6	12.3

Source: US Census Bureau, 2008-2012 American Community Survey, 5-year estimates

## APPENDIX D

# HOME Multi-family Rental Projects distribution by Family Poverty Level

	Total Number of HOME rental projects	Number and Percent HOME rental projects in census tracts where:					
		<i>&gt;20% families below poverty</i>		<i>&gt;30% families below poverty</i>		<i>&gt; 40% families below poverty</i>	
		Number	Percent	Number	Percent	Number	Percent
Hartford	60	54	90.0%	53	88.3%	35	58.0%
Baltimore	123	79	64.2%	39	31.7%	20	16.0%
Milwaukee	898	768	85.5%	617	68.7%	403	45.0%
<b>Metropolitan Statistical Area (MSA)</b>							
Hartford MSA	55	21	38%	10	18%	2	4%
Baltimore MSA	149	8	5%	1	1%	0	0%
Milwaukee MSA	85	2	2%	0	0%	0	0%

Source: 2007-2011 American Community Survey, Picture of subsidized housing (HUD), author calculations.

# APPENDIX E

## Considerations in Applying the Sufficient and Comparable Opportunities Test of the Site and Neighborhood Standards

To apply the site and neighborhood standards with respect to the existence of sufficient and comparable housing opportunities outside areas of minority concentration, PJs must assess the *overall* impact of assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration. In order to develop newly constructed rental housing in areas of minority concentration, PJs must determine that either (1) sufficient, comparable opportunities exist for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, **or** (2) the project is necessary to meet overriding housing needs that cannot be met in the housing market area. In making this assessment, PJs should be guided by the following questions:

### Do Sufficient and Comparable Opportunities Exist?

- Is there a reasonable distribution of assisted units such that each year, and over a period of several years, the area will offer an appropriate balance of housing choices within and outside areas of minority concentration?
  - An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
  - "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside the areas of minority concentration.
- Are the units that are within and outside of areas of minority concentrations "comparable opportunities?" That is:
  - Do they serve the same household type (such as elderly, persons with disabilities, family, large family)?
  - Do they have the same tenure type (owner/renter)?
  - Do they require approximately the same tenant contribution towards rent?
  - Do they serve the same income group?
  - Are they located in the same housing market?
  - Are they in standard condition?
- When assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, can the PJ answer the following questions affirmatively?
  - Are a significant number of assisted housing units available outside areas of minority concentration?
  - Is there significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population?
  - Are there racially integrated neighborhoods in the locality?
  - Does the locality operate programs to assist minority families that wish to find housing outside areas of minority concentration?
  - Have minority families benefited from local activities undertaken to expand choice for minority families (such as, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) outside of areas of minority concentration?
  - Has a significant proportion of minority households been successful in finding units in non-minority areas under the Section 8 programs?
  - Have comparable housing opportunities been made available outside areas of minority concentration through other programs?

### Is the Project Necessary to Meet an Overriding Housing Need?

- Is the proposed project an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood?
- Are proposed sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (in other words, is the neighborhood a "revitalizing area")?
- Are sites outside areas of minority concentration free from discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability?

Note, the overriding need criteria cannot serve as the basis for finding a site to be acceptable if such discrimination renders sites outside of areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

Source: U.S. Dept. of Housing and Urban Development, Fair Housing for HOME program participants: Promoting Fair and Accessible Housing Opportunities in HOME Projects at 4, *available at* [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordable-housing/library/modelguides/2005/200510](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordable-housing/library/modelguides/2005/200510)

# APPENDIX F

## Analysis of HOME Multi-Family Rental Project and Units – National and 50 Largest MSA

**Table 2: Distribution of HOME Projects and Housing Units Across Categories of Neighborhood Poverty Concentration - All Counties with HOME Projects**

	Number and Percent in Census Tracts where:										
	0% - 9.99% families live below poverty level		10% - 19.99% families live below poverty level		20%-29.99% families live below poverty level		30%-39.99% families live below poverty level		40% or more families live below poverty level		
Total	Number	%	Number	%	Number	%	Number	%	Number	%	
HOME Projects	34,763	8,357	24.0%	9,036	26.0%	7,373	21.2%	5,209	15.0%	4,788	13.8%
Units Within HOME Projects	385,684	95,946	24.9%	98,356	25.5%	81,616	21.2%	59,004	15.3%	50,762	13.2%
All Occupied Housing Units in Counties with HOME Projects	21,837,531	8,750,050	40.1%	6,465,798	29.6%	3,539,185	16.2%	1,899,743	8.7%	1,182,755	5.4%
All Renter-Occupied Housing Units in Counties with HOME Projects	10,105,292	2,940,525	29.1%	3,004,590	29.7%	2,051,125	20.3%	1,250,846	12.4%	858,206	8.5%

**Table 3: Distribution of HOME Projects and Housing Units Across Categories of Neighborhood Racial Composition - All Counties with HOME Projects**

	Number and Percent in Census Tracts where:							
	0% - 24.99% are Non-White	25% - 49.99% are Non-White	50% - 74.99% are Non-White	75% - 100% are Non-White				
Total	Number	%	Number	%	Number			
HOME Projects	10,987	31.6%	6,838	19.7%	5,729	16.5%	11,209	32.2%
Units Within HOME Projects	93,151	24.2%	71,070	18.4%	67,478	17.5%	153,985	39.9%
All Occupied Housing Units in Counties with HOME Projects	21,837,531	8.87%	4,796,413	22.0%	3,426,373	15.7%	4,741,721	21.7%
All Renter-Occupied Housing Units in Counties with HOME Projects	10,105,292	30.15%	2,281,302	22.6%	1,855,357	18.4%	2,953,615	29.2%

**Table 4: Distribution of HOME Projects and Housing Units Across Categories of Neighborhood Poverty Concentration - 50 Most Populous Metropolitan Areas<sup>243</sup>**

	Number and Percent in Census Tracts where:									
	0% - 9.99% families live below poverty level	10% - 19.99% families live below poverty level	20%-29.99% families live below poverty level	30%-39.99% families live below poverty level	40% or more families live below poverty level					
Total	Number	%	Number	%	Number					
HOME Projects	3,674	24.7%	3,414	22.9%	3,153	21.2%	2,345	15.7%	2,304	15.5%
Units Within HOME Projects	49,012	23.4%	49,701	23.7%	45,585	21.8%	36,061	17.2%	29,131	13.9%
All Occupied Housing Units	34,487,108	64.2%	11,090,455	20.7%	4,804,221	8.9%	2,183,195	4.1%	1,117,549	2.1%
All Renter-Occupied Housing Units	9,692,086	48.0%	5,261,196	26.0%	2,902,650	14.4%	1,490,734	7.4%	851,100	4.2%

243 50 most populous metropolitan areas in 2011



**Table 5: Distribution of HOME Projects and Housing Units Across Categories of Neighborhood Racial Composition - 50 Most Populous Metropolitan Areas**

		Number and Percent in Census Tracts where:							
		0% - 24.99% are Non-White		25% - 49.99% are Non-White		50% - 74.99% are Non-White		75% - 100% are Non-White	
Total		Number	%	Number	%	Number	%	Number	%
HOME Projects	14,890	2,389	16.0%	2,691	18.1%	2,677	18.0%	7,133	47.9%
Units Within HOME Projects	209,490	24,033	11.5%	31,542	15.1%	40,648	19.4%	113,267	54.1%
All Occupied Housing Units	53,682,528	19,881,704	37.0%	13,906,695	25.9%	8,888,820	16.6%	11,005,309	20.5%
All Renter-Occupied Housing Units	20,197,766	4,721,018	23.4%	5,266,418	26.1%	4,169,226	20.6%	6,041,104	29.9%

## APPENDIX G

# 50 Most Populous Metropolitan Areas in 2011

Rank	Metropolitan Area Name	2011 Population
1	New York-White Plains-Wayne, NY-NJ	11,670,135
2	Los Angeles-Long Beach-Glendale, CA	9,889,056
3	Chicago-Joliet-Naperville, IL	7,922,566
4	Houston-Sugar Land-Baytown, TX	6,086,538
5	Atlanta-Sandy Springs-Marietta, GA	5,359,205
6	Washington-Arlington-Alexandria, DC-VA-MD-WV	4,477,409
7	Dallas-Plano-Irving, TX	4,345,790
8	Riverside-San Bernardino-Ontario, CA	4,304,997
9	Phoenix-Mesa-Glendale, AZ	4,263,236
10	Philadelphia, PA	4,030,926
11	Minneapolis-St. Paul-Bloomington, MN-WI	3,318,486
12	San Diego-Carlsbad-San Marcos, CA	3,140,069
13	Santa Ana-Anaheim-Irvine, CA	3,055,745
14	Nassau-Suffolk, NY	2,843,252
15	Tampa-St. Petersburg-Clearwater, FL	2,824,724
16	St. Louis, MO-IL	2,817,355
17	Baltimore-Towson, MD	2,729,110
18	Seattle-Bellevue-Everett, WA	2,692,122
19	Denver-Aurora-Broomfield, CO	2,599,504
20	Oakland-Fremont-Hayward, CA	2,595,971
21	Miami-Miami Beach-Kendall, FL	2,554,766
22	Warren-Troy-Farmington Hills, MI	2,483,736
23	Pittsburgh, PA	2,359,746
24	Edison-New Brunswick, NJ	2,349,499
25	Portland-Vancouver-Hillsboro, OR-WA	2,262,605
26	San Antonio-New Braunfels, TX	2,194,927
27	Fort Worth-Arlington, TX	2,180,758
28	Sacramento—Arden-Arcade—Roseville, CA	2,176,235

29	Orlando-Kissimmee-Sanford, FL	2,171,360
30	Newark-Union, NJ-PA	2,153,014
31	Cincinnati-Middletown, OH-KY-IN	2,138,038
32	Cleveland-Elyria-Mentor, OH	2,068,283
33	Kansas City, MO-KS	2,052,676
34	Las Vegas-Paradise, NV	1,969,975
35	Boston-Quincy, MA	1,903,947
36	San Jose-Sunnyvale-Santa Clara, CA	1,865,450
37	Columbus, OH	1,858,464
38	Detroit-Livonia-Dearborn, MI	1,802,096
39	Charlotte-Gastonia-Rock Hill, NC-SC	1,795,472
40	San Francisco-San Mateo-Redwood City, CA	1,795,066
41	Austin-Round Rock-San Marcos, TX	1,783,519
42	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1,780,172
43	Indianapolis-Carmel, IN	1,778,568
44	Virginia Beach-Norfolk-Newport News, VA-NC	1,679,894
45	Nashville-Davidson—Murfreesboro—Franklin, TN	1,617,142
46	Providence-New Bedford-Fall River, RI-MA	1,600,224
47	Milwaukee-Waukesha-West Allis, WI	1,562,216
48	Cambridge-Newton-Framingham, MA	1,518,171
49	Jacksonville, FL	1,360,251
50	West Palm Beach-Boca Raton-Boynton Beach, FL	1,335,187

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