



Choice Constrained, Segregation Maintained: *Using Federal Tax Credits to Provide Affordable Housing*

A Report on the Distribution of Low Income
Housing Tax Credits in the New York City Region



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Table of Contents

Executive Summary	1
Introduction	3
The Region in Context.....	3
Historical Framework.....	7
LIHTC Program Overview.....	8
Duty to Affirmatively Further Fair Housing.....	10
New York Qualified Allocation Plans.....	12
LIHTC Rental Housing in New York City and its Suburbs	15
Report Methodology.....	15
Data Overview.....	17
Location of LIHTC Housing by Area Poverty Concentration.....	19
Location of LIHTC Housing by Area Racial/Ethnic Composition.....	24
Conclusions and Recommended Action Steps	29
Recommendations for U.S. Department of Treasury.....	29
Recommendations for New York Tax Credit Allocation Agencies.....	30

Executive Summary

Government policies that regulate the location or siting of affordable housing opportunities have an impact on the range of housing choices, neighborhood amenities, and other life opportunities that are available to lower-income families who qualify for such housing. Likewise, the placement of affordable housing can have an adverse or positive impact on public policy efforts aimed at deconcentrating poverty and reducing residential racial segregation. This report explores how one federal program, the Low Income Housing Tax Credit (LIHTC) program, has provided affordable rental housing opportunities in the New York City region. A major premise of this report is that *where* affordable housing opportunities are located matters.

An examination of the location of more than 52,000

low-income rental units produced under the federal LIHTC program between 1998 and 2007 in New York City and seven surrounding New York counties yielded the following key findings:

- Most LIHTC affordable housing units (71%) were located in areas of high or extreme poverty concentration.
- Most LIHTC affordable housing units (77%) were located in minority neighborhoods.
- LIHTC housing units were concentrated in higher-poverty and minority areas regardless of whether they involved the rehabilitation or new construction of multifamily housing.
- Roughly half (49%) of LIHTC affordable housing units in suburban areas were elderly units. Nearly two-thirds (63%) of all suburban elderly units were located in low-poverty neighborhoods, but only one-quarter (25%) of suburban family units were located in these areas. Similarly, nearly three-quarters (74%) of all suburban elderly units were developed in white or predominantly white areas,

while less than one-third (31%) of all family units were located in these communities.¹

- More than half of all affordable housing units developed in the study area received tax credits from New York City's Department of Housing Preservation and Development, the largest municipal developer of affordable housing in the nation. Only 2% of these units were located in low-poverty areas, and only 9% were located in white or predominantly white areas in New York City.

These and other findings support the argument that 10 years of LIHTC allocations by New York's three housing finance agencies to expand the supply of affordable housing opportunities in the region effectively reinforced, rather than reduced, residential racial segregation and poverty concentration. By locating the vast majority of low-income family developments in poor and predominantly minority neighborhoods, mostly in New York City, the tax credit allocation agencies also failed in their duty to affirmatively further fair housing. During the time period studied, the housing choices of eligible lower-income minority families were largely constrained and restricted to poor and minority neighborhoods. The authors of this report understand that there are a constellation of factors that contribute to decisions about

1. In this report, "family" housing refers to housing that is open to all households, including families with children, single persons, elderly households, etc. "Elderly" units are those intended for occupancy by older persons and housing that is exempt from renting to families with children under the FHA. This includes housing developments where all residents are 62 years of age and older, as well as housing developments where at least 80% of the households include at least one person who is 55 years of age or older.

where affordable housing will be developed, but there is no evidence that the New York allocating agencies studied here monitored the extent to which their actions were perpetuating segregation, or took steps to prevent the segregative outcome documented in this report.

The report contains two sets of recommendations. First, the report recommends that the U.S. Department of Treasury promulgate civil rights regulations to govern Treasury programs that finance the development of affordable housing, such as the LIHTC program. These regulations would, among other things, provide guidance on affirmative marketing and tenant selection to ensure nondiscrimination, mandate the collection of racial occupancy data by site, encourage the development of affordable housing in low-poverty areas, and define the essential elements of concerted community revitalization plans. The report also recommends that the federal departments of Treasury, Justice, and Housing and Urban Development implement all provisions of the interagency “Memorandum of Understanding” on the LIHTC program signed by the agencies in August 2000.

Second, the report recommends that the three tax credit allocation agencies in New York State conduct an annual review of all family and elderly developments based on area poverty rates and racial composition; maintain and analyze occupancy data by race, national origin, and the number of households using Housing Choice Vouchers; conduct on-site inspections of newly constructed affordable housing to ensure compliance with accessibility requirements; and utilize testing to monitor compliance with fair housing laws. In addition, it is recommended that the tax credit allocation agencies incorporate three threshold criteria into their tax credit application process: (1) a prohibition on residency or community board preferences unless an analysis demonstrates that such preferences will not discriminate and/or perpetuate residential racial segregation; (2) a submission of a detailed affirmative marketing plan designed to attract populations least likely to apply; and (3) an assurance that an application will be considered even if local officials state their opposition to or fail to indicate their support for a particular project. The report also recommends that each allocation agency

incorporate substantial scoring incentives and provide a multiplier to a project’s qualified basis to encourage the development of:

- Family housing in low-poverty and non-minority areas;
- Mixed-income housing (market-rate and low-income units);
- Family housing in areas with no concentration of LIHTC family housing or other subsidized family housing units; and
- Family housing in areas where land costs are higher.

The report also advocates that each allocation agency eliminate scoring incentives provided for local government support and limit scoring incentives provided for the development of affordable housing in higher-poverty areas called qualified census tracts.

This report answers an important question concerning where LIHTC housing opportunities were created in the New York City region over a 10-year period. Most of the affordable housing produced with federal tax credits was located in predominantly minority areas with higher poverty rates. Given the concentration of low-income units in poor and minority neighborhoods, eligible minority families had few opportunities to move to low-poverty areas, areas that may provide greater educational, employment, and other opportunities. The most serious question raised by this report is whether the Department of Treasury and the three New York tax credit allocation agencies have been meeting their duty to affirmatively further fair housing. The data presented in the report suggests that the LIHTC program has maintained, rather than reduced, residential racial segregation and has constrained, rather than expanded, housing choice for lower-income minority families.

Introduction

The federal Low Income Housing Tax Credit program, created by Congress in 1986, provides a critical source of funding for the construction and rehabilitation of low-income rental housing in the United States. Since its inception, the LIHTC program has been responsible for creating and preserving over 2.2 million units of affordable rental housing nationally.² According to the National Council of State Housing Agencies, approximately 90% of all affordable rental housing produced annually is financed through the LIHTC program.³ In 2010, half of all multifamily starts were financed in part by the LIHTC program, according to the National Association of Home Builders.⁴

This report examines LIHTC developments produced in the New York City region (“region” or “study area”) between January 1, 1998, and December 31, 2007. The region, as defined in this report, includes all five boroughs of New York City plus the seven suburban New York counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. Since the report

focuses on LIHTC housing placed in service over the 10-year period from 1998 to 2007, the analysis primarily relies on 2000 census data, as opposed to 2010 census data. The report’s goal is to examine the relationship between (1) the location of LIHTC housing and (2) poverty concentration and residential racial segregation in the region.

THE REGION IN CONTEXT

The 12-county New York City region is home to more than 12 million people, who account for more than 65% of the population of New York State and approximately 4% of the population of the United States.⁵ The majority of residents (more than eight million people) live in New York City, while approximately 4.5 million reside in the suburban New York counties.

According to the 2000 census, the region as a whole is one of the most racially and ethnically diverse in the nation, yet the suburban counties are vastly more homogeneous than New York City. For instance, African American, Hispanic, and Asian populations in New York

City collectively exceed 60% of the total population, while non-Hispanic whites comprise 74% of the suburban population.

Despite the presence of diverse population groups, residential segregation based on race and national origin persists throughout the region. According to a recent study, which applied a dissimilarity index to 50 metropolitan areas with the largest minority populations (based on the 2010 census), New York is the third most segregated metropolitan area for African Americans and the second most segregated for Latinos and Asian Americans.⁶

2. This number includes units that were placed in service between 1987 and 2010. See “Low-Income Housing Tax Credits” at the HUD website: <http://huduser.org/portal/datasets/lihtc.html> (2012).

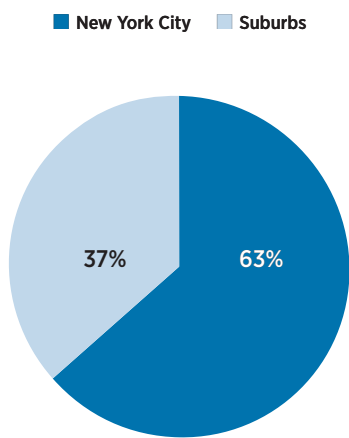
3. Lawrence, Peter. 2013. “Issue Background: Low-Income Housing Tax Credit,” Enterprise Community Partners. <http://www.enterprisecommunity.com/low-income-housing-tax-credits-policy>.

4. Ibid.

5. U.S. Census, 2000.

6. Logan, John R., and Brian Stults. 2011. *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census*, 5. Census Brief prepared for Project US2010.

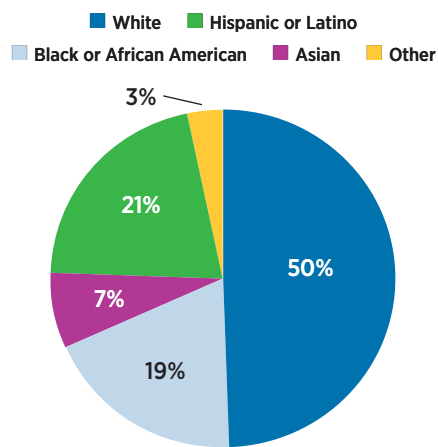
Population in Study Area (2000)



TOTAL: 12,689,665

Figure 1

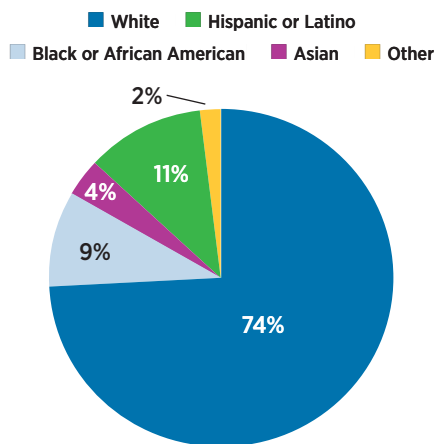
Race/Ethnicity in Study Area (2000)



TOTAL: 12,689,665

Figure 2

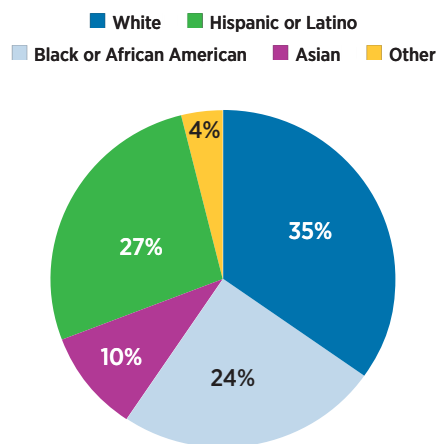
Race/Ethnicity in Suburban Counties (2000)



TOTAL: 4,681,387

Figure 3

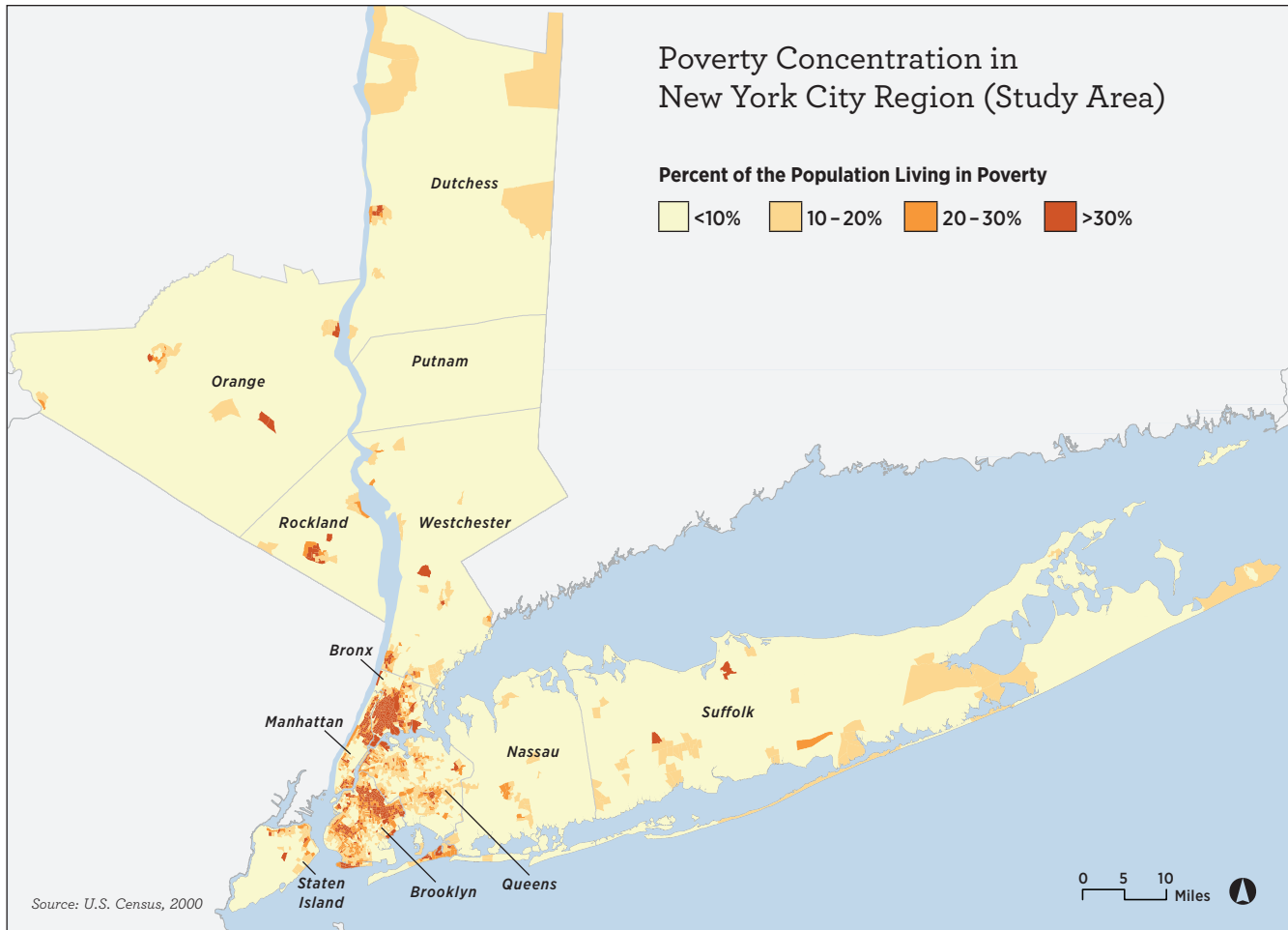
Race/Ethnicity in New York City (2000)



TOTAL: 8,008,278

Figure 4

Source: U.S. Census, 2000



Map 1

In 2007, the Fair Housing Justice Center (FHJC) analyzed 2000 census data for the entire New York City region to determine where households with incomes below the poverty level resided by race and level of neighborhood poverty concentration.⁷ The analysis revealed that low-income whites were far more likely to live in low-poverty neighborhoods than low-income African Americans and Latinos, who were much more likely to reside in areas of high or extreme poverty concentrations.

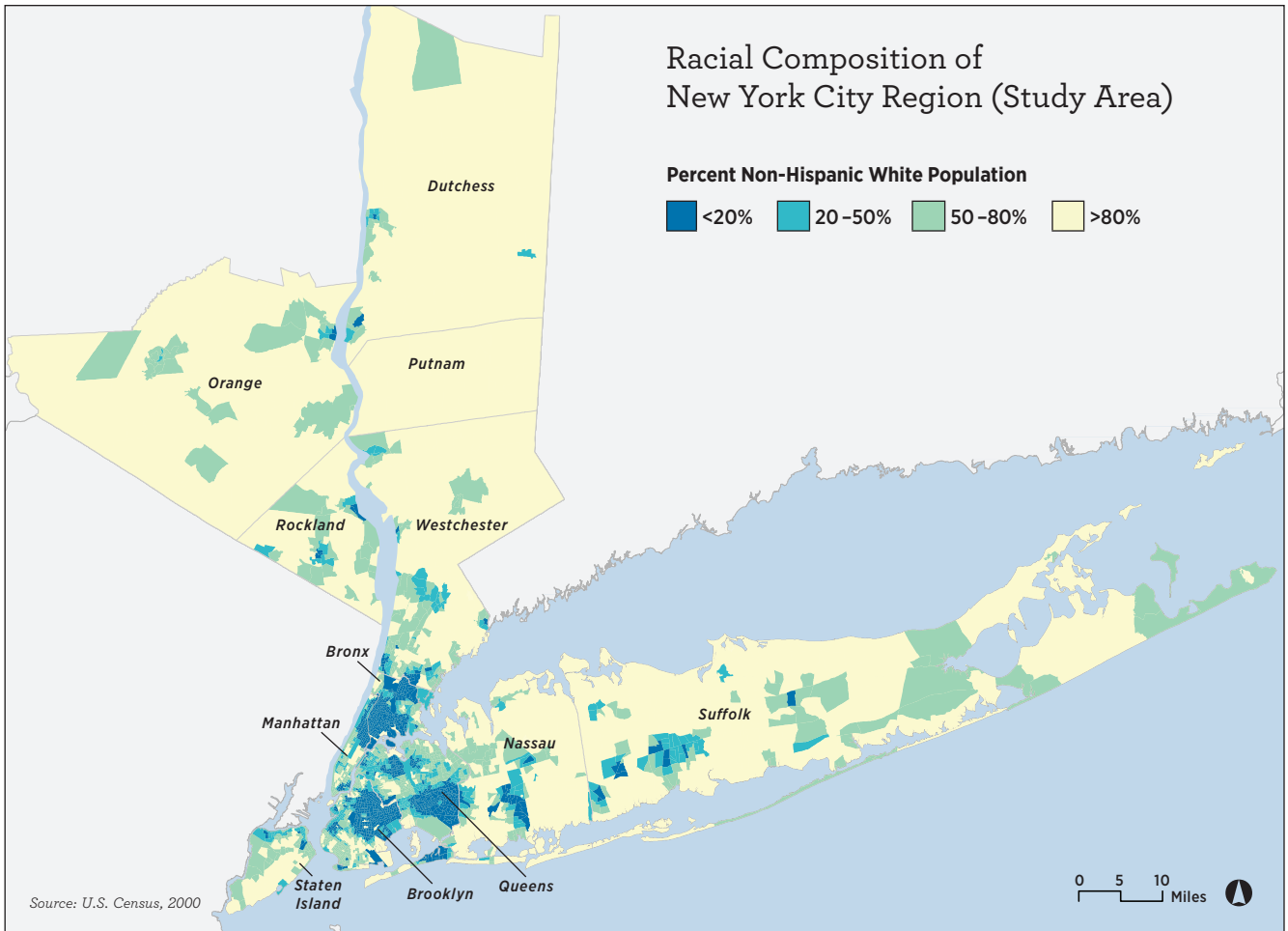
In the report, entitled *Increasing Access to Low-Poverty Areas by Creating Mixed-Income Housing*, the FHJC outlined the myriad adverse consequences that result when housing choice is restricted and people are isolated or balkanized by race or national origin, as follows:

*Separation limits opportunities for inter-group contact that can reduce biases, stereotypes, and prejudices. The spatial mismatch between populations needing work and areas of high job growth severely limits access to employment opportunities. Residential racial isolation frequently results in segregated schools. Unequal access to employment and educational opportunities contributes to disparities in income and wealth accumulation. Residential racial segregation fuels a vicious, self-sustaining cycle of inequality and contributes to the racialization of poverty.*⁸

The persistence of segregation and attendant inequalities in the New York City region prompt this examination of the LIHTC program.

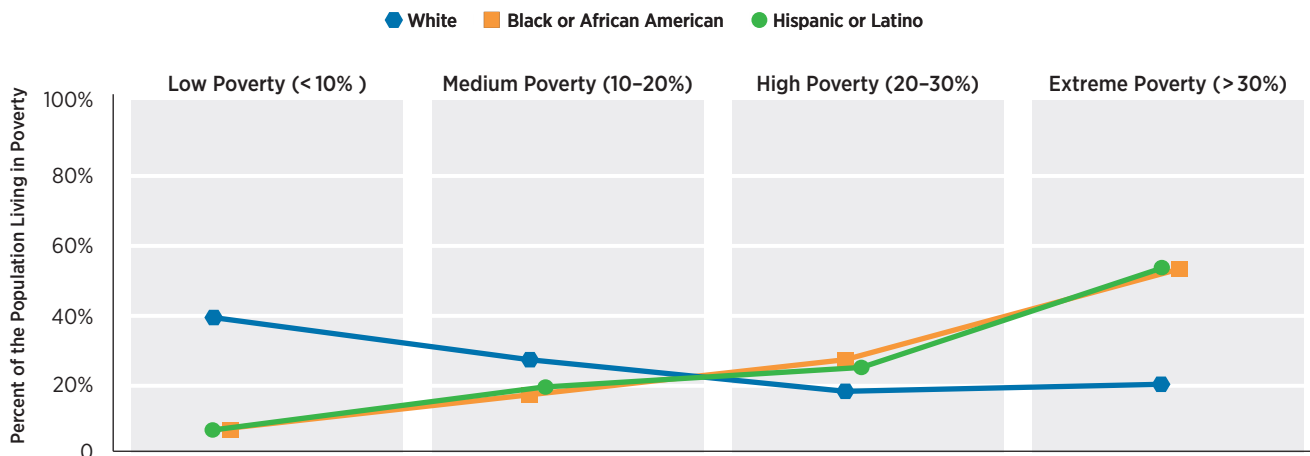
7. The FHJC is a New York City-based regional civil rights organization dedicated to eliminating housing discrimination; promoting open, accessible, and inclusive communities; and strengthening enforcement of fair housing laws.

8. Houk, Diane L., Erica Blake, and Fred Freiberg. 2007. *Increasing Access to Low-Poverty Areas by Creating Mixed-Income Housing*, Fair Housing Justice Center, 4.



Map 2

Location of Populations Below the Poverty Level by Race and Poverty Concentration of Census Tracts (New York City Region)



HISTORICAL FRAMEWORK

Historically, federal and state governments created and sustained residential racial segregation. In the late 1930s and 1940s, both public housing and veterans' housing were operated by the federal government on a racially segregated basis.⁹ During this same period, racial segregation was reinforced by the proliferation of local race-restrictive covenants on property deeds. These were enforced by state courts and often required as a condition of receiving financing insured by the federal government through the Federal Housing Administration.¹⁰

Even after the Supreme Court held that race-restrictive covenants were unenforceable, many local suburban communities throughout the 1950s and 1960s thwarted efforts to locate public housing or other subsidized rental housing within their jurisdictions.¹¹ Suburban municipalities employed exclusionary zoning techniques (e.g., requiring large minimum lot sizes, prohibiting multifamily rental housing, etc.), restrictive building codes, aesthetic boards, and other exclusionary devices.¹² At the same time, local urban officials often restricted public housing "projects" to poor and minority neighborhoods.¹³ Some scholars have referred to public housing as a "federally funded, physically permanent institution for the isolation of black families by race and class [and] an important structural cause of concentrated poverty in U.S. cities."¹⁴

Between 1968 and the early 1970s, Congress enacted the Fair Housing Act (FHA) and created many federally-assisted housing programs.¹⁵ However, by staving off proposals to build affordable rental housing in

their neighborhoods, white suburban communities prevented lower-income minority families from moving to these areas.¹⁶ Even where affordable rental housing opportunities existed in low-poverty, predominantly white neighborhoods, the use of residency preferences and requirements, site-based waiting lists, and private market discrimination effectively worked to keep most minority families from accessing such housing opportunities.¹⁷

One example of how public and assisted housing programs were operated during these years on a racially segregated basis can be found in the City of Yonkers, a Westchester County suburb north of New York City. In 1985, a federal court found that Yonkers discriminated on the basis of race in violation of the FHA when it approved 34 of 36 subsidized rental housing developments in Southwest Yonkers, a predominantly African American and Latino area, between 1949 and 1982.¹⁸ The court found that of the two housing sites approved outside of Southwest Yonkers, one was elderly housing that excluded families with children, and the other was only approved after the U.S. Department of Housing and Urban Development (HUD) threatened to discontinue the city's urban renewal funds unless subsidized family housing was built outside of Southwest Yonkers.¹⁹

During 30 years of housing siting decisions by the City of Yonkers, proposed public and assisted housing locations outside of Southwest Yonkers met with opposition from white residents and were routinely rejected by the City Council.²⁰ Consequently, by 1980, more than 6,000 subsidized housing units were located in Southwest

9. Turner, Margery Austin, Susan J. Popkin, and Lynette Rawlings. 2009. *Public Housing and the Legacy of Segregation*, Urban Institute Press, 3-4.

10. Gotham, Kevin Fox. 2002. *Race, Real Estate, and Uneven Development*, State University of New York Press, 57.

11. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

12. Gotham, 68.

13. Massey, Douglas S., and Nancy A. Denton. 1993. *American Apartheid*, Harvard University Press, 56.

14. Massey, Douglas S., and Shawn Kanaiapuni. 1993. "Public Housing and the Concentration of Poverty," *Social Science Quarterly* 74(1):120.

15. 42 U.S.C. § 3601 *et seq.* (Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act), as amended in 1988, makes housing discrimination illegal because of race, religion, color, sex, national origin, familial status, and disability.

16. *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974); *United States v. City of Parma*, 494 F. Supp. 1049 (N.D. Ohio 1980).

17. *King v. New Rochelle Mun. Housing Auth.*, 442 F.2d 646 (2d Cir. 1971); *United States v. Housing Auth. of City of Chickasaw*, 504 F. Supp. 716 (S.D. Ala. 1980); *Davis v. New York City Housing Authority*, 839 F. Supp. 215 (S.D.N.Y. 1993); Wienk, Ron, et al., *Measuring Racial Discrimination in American Housing Markets: The Housing Market Practices Study* (HUD 1979).

18. *United States v. Yonkers Bd. of Education et al.*, 624 F. Supp. 1276 (S.D.N.Y. 1985).

19. *Ibid.*, 1300, 1326-1327.

20. *Ibid.*, 1294-1296.

Yonkers, where only 38% of the city's total population resided but whose population was 81% minority.²¹ By contrast, the total minority population of Yonkers was less than 20% in 1980.²²

Based on this stark pattern of segregation and other direct evidence of racially discriminatory housing decisions, the court held that the City of Yonkers had intentionally created and maintained racial segregation in both its housing and schools in violation of the Constitution, the FHA, and other federal civil rights laws.²³ Regarding the plaintiffs' housing claims, the court found that "race

has had a chronic and pervasive influence on decisions relating to the location of subsidized housing in Yonkers."²⁴ Subsequently, a federal appeals court affirmed the trial court's determination, holding that it is unlawful for a local government to site subsidized housing only in areas "in which minority residence is already concentrated, thereby enhancing and perpetuating racial segregation."²⁵

A year after the City of Yonkers was held liable under the Fair Housing Act for perpetuating racial segregation by concentrating subsidized housing in one quadrant of the city, Congress created the Low Income Housing Tax Credit.²⁶

LIHTC PROGRAM OVERVIEW

Since 1986, the Department of Treasury has allocated tax credits to states for the acquisition, rehabilitation, and construction of affordable rental housing under the LIHTC program. In turn, housing finance agencies have awarded the tax credits to housing developers through a competitive application process. Property owners who receive the tax credits can use them to offset taxes on other income or, more typically, sell the credits to investors to raise funds for the initial development costs of a project. The LIHTC allocation process is governed by selection criteria contained in each housing finance agency's Qualified Allocation Plan (QAP).

Tax credits are provided for a period of 10 years, and LIHTC-subsidized units must be rented to low-income households at restricted rent levels for at least 30 years.²⁷ Within this general framework, developers may choose to create housing where: (1) at least 20% of the units are rented to households whose income is 50% or less of area

median income (AMI), or (2) at least 40% of the units are for renters with income less than 60% of AMI.²⁸ Annual rents for LIHTC units, referred to as "qualified units," are limited to 30% of the elected 50% or 60% of AMI.²⁹

The specific amount of tax credits awarded to a particular housing project is based on the tax credit rate and the project's "qualified basis," which factors in development cost (excluding land and some non-depreciable costs) and the proportion of qualified low-income units.³⁰ Housing finance agencies provide either a 4% or 9% tax credit rate.³¹ In New York, eligible projects financed by government bonds are offered the 4% credit "as of right" on an ongoing, or rolling, basis.³² In contrast, the 9% credit is allocated each year to projects via a competitive application process governed by each agency's QAP.

The amount of a project's qualified basis can be increased by raising the percentage of qualified units

21. *Ibid.*, 1290-1291.

22. *Ibid.*

23. *Ibid.*, 1288.

24. *Ibid.*, 1376.

25. *United States v. Yonkers Bd. of Education*, 837 F.2d 1181, 1219 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 2821 (1988).

26. Public Law (PL) 99-514.

27. HOME and Low Income Housing Tax Credits (LIHTC) > LIHTC Basics > Eligibility. 2013. HUD.gov. <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc-basics/eligibility.cfm>.

28. Each year, HUD calculates Area Median Income at the Metropolitan Statistical Area or county level for a household of four people, which serves as the basis for calculating monthly rents at specific LIHTC development sites. See "Data Sets: Income Limits" at the HUD website: <http://www.huduser.org/portal/datasets/il.html> (2013). See also Abt Associates Inc., *Updating the Low Income Housing Tax Credit (LIHTC) Database: Projects Placed in Service through 2006*, HUD Office of Policy Development and Research, 1 (2009).

29. Abt Associates, 1.

30. *Ibid.*

31. *Ibid.*

32. NYS Homes and Community Renewal. April 12, 2013. "Low Income Housing Tax Credit Program." <http://www.nyshcr.org/Topics/Developers/LowIncome/>.

in a development or by locating the development in a “qualified census tract” (QCT) or “difficult development area” (DDA), as defined by HUD.³³ In general, QCTs are census tracts with higher poverty rates, and DDAs are either metropolitan areas or non-metropolitan counties with higher housing development costs.³⁴ While any project in a QCT can receive a basis boost, the LIHTC statute limits scoring preferences for projects in QCTs to those that are covered by a “concerted community revitalization plan.”³⁵ The statute, however, does not define what elements are required for a revitalization plan to be considered “concerted,” and Treasury has not promulgated any regulations or guidance concerning this requirement.³⁶ States have largely accommodated this rule by providing points to projects in redeveloping neighborhoods that have some sort of plan, regardless of what opportunities or investments exist or are proposed for the community. Consequently, as currently applied, these incentives encourage developers to propose LIHTC housing projects that: (1) contain 100% qualified low-income units (as opposed to a mix of market-rate and low-income units) and (2) are located in high-poverty urban neighborhoods.

While the LIHTC program has produced a relatively large number of rental housing units, concerns have been raised that the geographic distribution of LIHTC housing has exacerbated poverty concentration and racial segregation. For example, one recent study showed that of all rental units produced nationally between 1995 and 2006, 13% were located in areas with at least a 30% poverty rate, while more than 20% of LIHTC units were located in these areas.³⁷ Similarly, 41% of all rental units were in low-poverty census tracts (those with less than 10% poverty), while only 33% of LIHTC units were in low-poverty areas.³⁸

When looking at central cities, the study found that the pattern becomes even more pronounced: 35% of LIHTC units were found to be located in census tracts with over 30% poverty, while only 21% of all rental units were found in similar locations.³⁹ LIHTC units in DDAs are more likely to be in high-poverty census tracts than all rental units in DDAs.⁴⁰

With respect to race and national origin, a greater percentage of LIHTC units (51%) were found to be sited in minority neighborhoods (i.e., where at least 40% of the population is non-white) compared to all rental units (40%).⁴¹ During the same period, 39% of all rental units were located in areas with a 20% minority population, while only 29% of LIHTC units were located in predominantly white communities.⁴² In central city areas, 61% of LIHTC units were located in minority neighborhoods, compared to 45% of all rental units.⁴³

Studies have found that during the first 10 years of the LIHTC program, it was “used much more often to provide better housing in poor neighborhoods rather than to provide affordable housing in higher-income neighborhoods.”⁴⁴ Consequently, neighborhoods with LIHTC units have “considerably higher poverty rates, lower median incomes, and lower median home values than typical metropolitan neighborhoods.”⁴⁵ For example, LIHTC neighborhoods during the 1990s had disproportionately high African American populations compared to metropolitan neighborhoods overall, as well as higher poverty rates.⁴⁶ This trend does not appear to have changed over the course of the second decade of the LIHTC program.⁴⁷

In contrast, a working paper issued by the Furman Center in 2011 concluded that there is “no evidence that the

33. Abt Associates, 48.

34. *Ibid.*

35. Julian, Elizabeth K. 2013. “Community Revitalization, Civil Rights, and the Low Income Housing Tax Credit Program,” *Carolina Planning* 38:26.

36. *Ibid.*

37. Abt Associates, 59.

38. *Ibid.*, 56.

39. *Ibid.*, 59.

40. *Ibid.*, 61.

41. *Ibid.*, 57.

42. *Ibid.*

43. *Ibid.*, 59.

44. Cummings, Jean L., and Denise DiPasquale. 1999. “The Low-Income Housing Tax Credit: An Analysis of the First Ten Years,” *Housing Policy Debate*, 10:272.

45. Freeman, Lance. March 2004. *Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Developments in the 1990s*, The Brookings Institution, Census 2000 Survey Series, 1.

46. *Ibid.*, 7.

47. Pfeiffer, Dairde. December 2009. *The Opportunity Illusion: Subsidized Housing and Failing Schools in California*, The Civil Rights Project, 15.

LIHTC program is associated on average with greater racial segregation for minorities [but] rather, evidence of the reverse.”⁴⁸ This finding stems from a premise that lower-income minority neighborhoods and tenants would be no less segregated than if the LIHTC program had never existed. The report arrives at this finding without making any distinction between elderly and family housing, and it cites anecdotal instances in two states

where LIHTC housing located in predominantly minority neighborhoods had a slightly lower minority population than the surrounding neighborhoods. While the working paper stops short of concluding that the program actually had a desegregative impact in these areas, its findings seem to suggest that LIHTC developments have, in fact, contributed to maintaining existing racial segregation.⁴⁹

DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING

State tax credit allocation agencies are governed by the Fair Housing Act’s duty to “affirmatively further fair housing” (AFFH), which obligates them to (1) evaluate the impact of LIHTC siting decisions on residential segregation and (2) adopt policies to ensure that LIHTC developments do not create or maintain segregation. Since its enactment in 1968, Section 3608 of the Fair Housing Act has provided that “all executive departments and agencies shall administer their programs and activities relating to housing and urban development... in a manner affirmatively to further the purposes of [Title VIII] and shall cooperate with the [HUD] Secretary to further such purposes.”⁵⁰

In a leading case, *NAACP, Boston Chapter v. Secretary of Housing and Urban Development*, a federal appellate court found that:

*[The FHA’s congressional] supporters saw the ending of discrimination as a means toward truly opening the nation’s housing stock to persons of every race and creed... This broader goal suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.*⁵¹

The court went on to hold that HUD’s duties under Section 3608 were, thus, greater than simply refraining from discrimination.⁵²

Since passage of the FHA in 1968, two executive orders have been issued interpreting Section 3608 and authorizing sanctions for noncompliance. In 1980, President Carter issued Executive Order 12259, defining the programs and activities covered by Section 3608 to include those “operated, administered or undertaken by the Federal government; grants; loans; contracts; insurance; guarantees; and Federal supervision or exercise of regulatory responsibility.”⁵³

Further clarification of this duty was set forth in Executive Order 12892, issued by President Clinton in 1994, which states:

*The head of each executive agency is responsible for ensuring that its programs and activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing...*⁵⁴

In addition, the 1994 executive order authorized federal agencies to impose sanctions if entities such as states and local governments “participating in, or supervised or

48. Horn, Keren M., and Katherine M. O’Regan. May 2011. *The Low Income Housing Tax Credit and Racial Segregation*, Furman Center for Real Estate and Urban Policy, 35.

49. *Ibid.*, 36.

50. 42 U.S.C. § 3608(d). Section 3608(e)(5) applies identical requirements to the Secretary of HUD as § 3608(d). See *Darst-Webbe Tenant Assoc. Bd. v. St. Louis Housing Authority*, 417 F.3d 898 (8th Cir. 2005); *Clients’ Council v. Pierce*, 711 F.2d 1406 (8th Cir. 1983); *Alschuler v. HUD*, 686 F.2d 472 (7th Cir. 1981); *Shannon v. HUD*, 436 F.2d 809 (3rd Cir. 1970); *Otero v. New York City Housing Authority*, 484 F.2d 122 (2d Cir. 1973); *Inclusive Communities Project v. HUD*, 2009 WL 3122610 (N.D. Tex. 2009); *Jorman v. Veterans Administration*, 500 F. Supp. 460 (N.D. Ill. 1980); *Resident Advisory Board v. Rizzo*, 425 F. Supp. 987 (E.D. Pa. 1976), *aff’d as modified*, 564 F.2d 126 (3rd Cir. 1977), *cert. denied*, 435 U.S. 908 (1978).

51. 817 F.2d 149, 155 (1st Cir. 1987).

52. *Ibid.*

53. 46 FR 1253 (1980).

54. 59 FR 2939 (1994).

regulated under” a federal housing program or activity did not comply with the order.⁵⁵

While most of the country’s federal housing programs are overseen by HUD, the Treasury Department has had the statutory responsibility for oversight of the LIHTC program since Congress created it in 1986. Treasury Department regulations regarding the LIHTC program reference the agency’s duty to affirmatively further the goals of the FHA. For example, Treasury regulations specify that to be eligible for tax credits, a residential unit in a building must be rented to the general public in a manner consistent with housing policy governing nondiscrimination, as evidenced by HUD rules or regulations.⁵⁶ This includes, by reference, HUD’s “site and neighborhood standards” for public housing development, which require that projects must not be located in:

An area of minority concentration unless (A) 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 (B) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area.⁵⁷

Additionally, this HUD regulation requires that the “site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low income persons.”⁵⁸ Thus, HUD regulations, and by reference, Treasury Department regulations, generally require federally funded, administered, supervised, or regulated housing projects, such as LIHTC developments, to be sited in a manner that increases housing choice, decreases racial segregation, and deconcentrates poverty.

State and local housing finance agencies that allocate tax credits are subject to the “affirmatively furthering” requirement of the FHA, and their QAPs should be consistent with the requirement’s obligations.⁵⁹ This duty encompasses more than a responsibility not to engage in any discriminatory practices; it also requires an agency to consider the civil rights impact of housing and development decisions, such as whether the siting of new housing developments will increase or perpetuate segregation.⁶⁰

In *Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al.*, a Dallas-based civil rights organization challenged the state tax allocation agency’s practice, over the course of 10 years, of approving tax credit applications for low-income, non-elderly housing developments in minority neighborhoods at a higher rate than in predominantly white areas.⁶¹ In 2012, the court found that TDHCA’s practices had violated the Fair Housing Act’s prohibitions against making housing unavailable and discriminating in the provision of financial assistance for the construction of housing based on race.⁶² Specifically, the court found that TDHCA could have provided, but did not provide, additional scoring incentives in its QAPs to encourage the development of LIHTC units in high-opportunity areas.⁶³ Ultimately, the court held that TDHCA failed to show there was no alternative course of action that would serve its legitimate interests of providing affordable housing with a less discriminatory impact.⁶⁴ The court adopted a five-year remedial plan to reduce the discriminatory impact of future LIHTC allocations by amending the agency’s QAP scoring criteria to promote the siting of housing in a manner that would promote residential racial integration.⁶⁵

55. *Ibid.*

56. 26 C.F.R. § 1.42-9(a).

57. 24 C.F.R. § 941.202.

58. *Ibid.*

59. Roisman, Florence Wagman. 1998. “Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws,” *U. Miami Law Review*. 52:1011; *In re Adoption of 2003 LIHTC Qualified Allocation Plan*, 848 A.2d 1, 10 (N.J. Super. Ct. App. Div.), *cert. denied*, 861 A.2d 846 (N.J. 2004).

60. Korman, Henry. 2005. “Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs,” *Journal of Affordable Housing*, 14:4, 298.

61. *Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 749 F. Supp. 2d 486, 499-500 (N.D. Tex. 2010).

62. *Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 860 F. Supp. 2d 312, 331 (N.D. Tex. 2012).

63. *Ibid.*

64. *Ibid.*

65. *Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 2012 WL 3201401 (N.D. Tex. 2012).

NEW YORK QUALIFIED ALLOCATION PLANS

This section of the report describes key provisions related to the siting of LIHTC projects from the 2008 QAPs used by the three New York tax credit allocating agencies: the New York State Division of Housing and Community Renewal (DHCR), the New York State Housing Finance Agency (HFA), and the New York City Department of Housing Preservation and Development (HPD).⁶⁶ This description is meant to provide a snapshot of the basic framework utilized by each agency and does not purport to reflect the varying QAP criteria used by the agencies throughout the 10-year period for which LIHTC housing development location data was collected.⁶⁷

To what extent do the QAPs contain selection criteria aimed at expanding housing choice, increasing the supply of open housing, and fostering more inclusive communities? Do the QAPs incorporate criteria to ensure that LIHTC siting decisions do not increase or perpetuate residential segregation? In short, do the QAPs enable the credit allocating agencies to meet their legal duty to affirmatively further fair housing?

New York's Tax Credit Allocating Agencies

Statewide, DHCR and HFA are responsible for allocating federal tax credits to finance the construction and rehabilitation of affordable housing. DHCR is the lead housing tax credit agency for New York State and oversees the allocation of federal tax credits to housing developers through an annual competitive process it operates according to its QAP.⁶⁸ HFA also operates at a statewide level; it allocates 4% tax credits available “as of right” when bond financing is used for housing development, as well as a portion of the state’s allocated

9% tax credits through an annual competitive application process governed by its QAP.⁶⁹

In New York City, LIHTC housing is financed by HPD, the principal municipal housing development agency, in addition to DHCR and HFA. Each year, HPD awards a portion of the federal 9% credits allocated to New York State via a competitive process; the precise amount of HPD’s authority is negotiated annually with the state.⁷⁰

2008 QAP Scoring Criteria

In 2008, the three housing finance agencies utilized separate QAPs, but each contained similar scoring criteria that provided points based on factors related to the location of a proposed project. Overall, these criteria offered limited points for projects in areas that would promote the geographic dispersion of low-income housing.⁷¹

DHCR’s 2008 QAP offered up to 15 points (out of 100) for projects proposed to be developed in geographic areas that met certain criteria. Of the four locational criteria presented, the applicant only needed to meet three in order to obtain the maximum 15 points. One of the criteria provided points if the proposed project would be located in an area with “limited or no subsidized affordable housing production and an unmet demand for affordable housing in the past 10 years.”⁷² The remaining three options were:

- The primary market area for the project has a vacancy rate of less than 5% for comparable units;
- The proposed project is part of a comprehensive community revitalization plan; and

66. In 2009, the State of New York created an umbrella agency called New York State Homes and Community Renewal. The agency consists of DHCR, HFA, and other housing and community renewal agencies. See NYS HCR’s “Agency Description,” <http://www.nyshcr.org/AboutUs/AgencyDescription.htm> (2012).

67. In addition, this report does not analyze modifications made by the agencies to their QAPs since 2008.

68. NYS HCR. August 13, 2012. “Agency Description.” <http://www.nyshcr.org/AboutUs/AgencyDescription.htm>.

69. NYS HCR. October 5, 2012. “Stand-Alone As of Right LIHTCs: Allocation of As of Right LIHTC to Projects Financed by Bonds from an Issuer Other than NYSHFA.” <http://www.nyshcr.org/Topics/Developers/LowIncome/Stand-AloneAsofRightLIHTCs.htm>.

70. NYC HPD. 2013. “Housing Finance Programs: Low Income Housing Tax Credits.” http://www.nyc.gov/html/hpd/html/developers/low_income.shtml.

71. 2008 DHCR QAP, Section 2040.3(f).

72. 2008 DHCR QAP, Section 2040.3(f)(1)(i).

- The proposed project is supported by significant local measures, including but not limited to infrastructure improvements, real property tax relief, and rezoning.⁷³

As long as a housing application met these three criteria, it could be awarded the maximum 15 points allowed for this scoring category—regardless of whether the area in which the project would be located already had high levels of subsidized affordable housing.

Additionally, the QAP locational criteria just described provided points in the application process for housing that is part of a community revitalization plan. Areas in need of revitalization are more commonly found in QCTs for which the LIHTC statute already includes a preference. Providing additional scoring points in the QAP for applications that propose housing as part of a community revitalization plan increased the likelihood developers would only propose housing in high-poverty neighborhoods.

Moreover, the 2008 DHCR criteria provided points for projects that had already secured local public support, whether through infrastructure improvements, property tax relief, or rezoning. These forms of public assistance have often been harder for LIHTC developers to obtain for developments in low-poverty neighborhoods where low-income housing does not already exist and where local resistance to such housing may be strong.⁷⁴

The 2008 QAP utilized by HPD also appears to include a preference for housing located in low-income and blighted areas.⁷⁵ HPD awarded up to 23 points (out of 115) for projects located in “targeted areas,”⁷⁶ which included: (1)

HPD-designated slums and blight areas; (2) census tracts where 51% or more of families have incomes below 80% of AMI; and (3) QCTs where the project contributed to a concerted community revitalization plan.⁷⁷ Points were also available for the rehabilitation of existing housing and projects intended for eventual tenant ownership.⁷⁸

By contrast, HFA was the only tax credit agency in New York in 2008 with scoring criteria that provided points for the geographic dispersion of low-income housing.⁷⁹ Specifically, the QAP included a maximum of five out of 100 points for “project location” if the project fostered “the geographic dispersion of low income housing” by siting housing in “an area with few such units.”⁸⁰ These same five points were also available if the location was deemed “suitable” for the intended tenant population.⁸¹ To acquire the five points for suitability under this subsection, the QAP required an evaluation of the proximity of schools, medical and recreational facilities, mass transit, social services, and employment opportunities.⁸²

Overall, however, HFA’s scoring criteria did not provide a consistent or strong incentive for applicants to build LIHTC units outside of high-poverty areas.⁸³ The QAP provided up to 10 points for projects in QCTs where the development would contribute to a community revitalization plan.⁸⁴ Five points were offered for projects with support from state or local officials or community groups, which could be shown by: (1) the award of a locally administered grant, subsidy, or tax abatement; (2) reference to a formally adopted local development plan; or (3) statements from local officials or community group leaders.⁸⁵ Nonetheless, and more so than DHCR and HPD, HFA’s criteria allowed developers to receive competitive

73. 2008 DHCR QAP, Section 2040.3(f)(1)(ii) – (iv).

74. Houk, et al. 2007. 75-78.

75. While HPD’s most recent QAP (2012) changes some of its scoring criteria related to the points above, the new project location criteria seem to do little to encourage development outside of high-poverty segregated census tracts. Particularly, the new NYCHA category appears to incentivize developers to create LIHTC projects adjacent to existing public housing, which may only serve to further concentrate low-income rental units in areas that are already high-poverty and racially segregated. No incentive is provided to create mixed-income housing under HPD’s new project location criteria. 2012 HPD QAP, Section VI(C)(1).

76. 2008 HPD QAP, Section VI(C)(1).

77. *Ibid.*

78. 2008 HPD QAP, Section VI(C)(3) and (4).

79. 2008 HFA QAP, Section 2188.6.

80. 2008 HFA QAP, Section 2188.6(a)(1).

81. 2008 HFA QAP, Section 2188.6(a)(2).

82. *Ibid.*

83. The HFA revised its QAP in 2010 with nominal changes to Section 2188.6, which includes points for projects that prioritize energy efficiency and the rehabilitation of historic structures.

84. 2008 HFA QAP, Section 2188.6(k).

85. 2008 HFA QAP, Section 2188.6(b)(2).

scores with proposals for mixed-income LIHTC housing in low-poverty areas where few low-income housing opportunities existed.

If the criteria utilized by the three New York tax credit agencies in previous years were similar to those found in their 2008 QAPs, then the selection process would not appear to have effectively rewarded or incentivized a geographic dispersion of LIHTC housing overall. Worse yet, the credit-allocating process used in the region may have directly or indirectly favored housing proposals that located affordable LIHTC housing in poor and minority neighborhoods.⁸⁶

* * *

Long before Congress created the LIHTC program, pronounced patterns of racial and economic segregation were already in place in most metropolitan regions in the United States. Nonetheless, those who are charged with deciding how to allocate tax credits to support the development of affordable housing opportunities, such as New York's three housing finance agencies, should be mindful of their legal duty to affirmatively further fair housing and to avoid contributing to poverty concentration and residential racial segregation.

In view of the agencies' civil rights obligations, it is appropriate to ask where LIHTC housing opportunities have been created in the New York region. Are New York's LIHTC allocating agencies living up to their duty to affirmatively further fair housing? Has the LIHTC program expanded or constrained housing choices for lower-income families? Has it increased, perpetuated, or reduced residential racial segregation? Do the policies established and implemented by New York's allocating agencies lead to more or less concentrated poverty?

86. Court testimony in 2011 by HPD's director of marketing points to the notion that the way that HPD allocated its tax credits contributed to the saturation of LIHTC projects in certain low-income neighborhoods. The director testified, "in the South Bronx the predominant product that we build there and finance there is usually pegged at 60 percent AMI, and there's an awful lot of construction there in Bronx Community Boards 1, 2 and 3 that have that particular status, and it's like too much of one thing in a particular area." When asked whether the concentration of units with rents at 60% of the area median income was created by utilizing the LIHTC program, he replied, "Correct." *Broadway Triangle Community Coalition v. Bloomberg*, Index. No. 112799/09 (Sup. Ct. N.Y. County)(Hearing Transcript, July 20, 2011, p. 69, lines 9-25).

LIHTC Rental Housing in New York City and its Suburbs

REPORT METHODOLOGY

This report examines the geographic distribution of LIHTC housing within the 12-county New York City region, which includes the five counties of New York City and seven suburban counties within New York State: Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

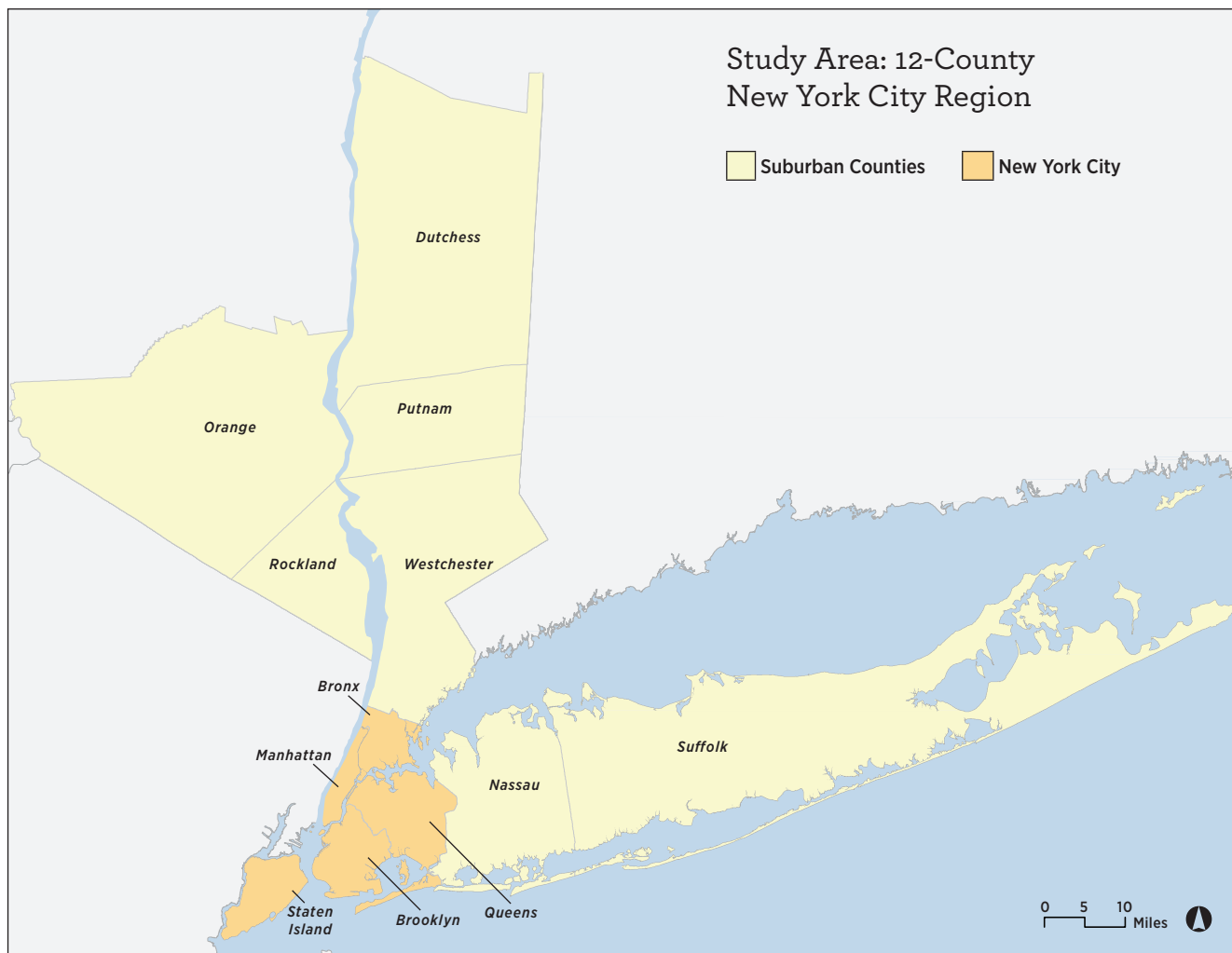
The data for this report came from the three tax credit allocating agencies in the State of New York: DHCR, HFA, and HPD. The data includes information on LIHTC-subsidized developments placed into service between January 1, 1998, and December 31, 2007.

Using New York State's Freedom of Information Law, the FHJC requested and obtained data on LIHTC developments from all three tax credit allocation agencies. The following six categories of information were requested for every LIHTC development placed in service during the specified 10-year period:

- Total number of units
- Total number of low-income units
- Whether rehabilitation or new construction development
- Whether family or elderly housing
- Whether 4% or 9% tax credits
- Street address of the development

There are two qualifications or limitations on the data obtained that require some explanation. First, to the extent that a small number of developments were categorized as “special needs housing” (e.g., homeless, disabled, etc.), these developments were counted as family developments for this analysis. Second, HPD informed the FHJC that it does not maintain data on whether its LIHTC developments are family or elderly housing. While this means that the report does not contain a breakdown of all elderly and family units in New York City, the breakdown of family and elderly housing is complete for the seven suburban counties. For the purposes of this report, all HPD units are characterized as “family” units in the following maps.

Using a geographic information system (GIS), the address of each LIHTC development was geo-coded and cross-referenced with tract-level data on race and poverty obtained from Summary File 3 of the 2000 census. Census tracts were categorized according to poverty concentration and racial/ethnic compositions, defined by the FHJC for the purposes of this report as follows:



Map 3

Poverty Concentration

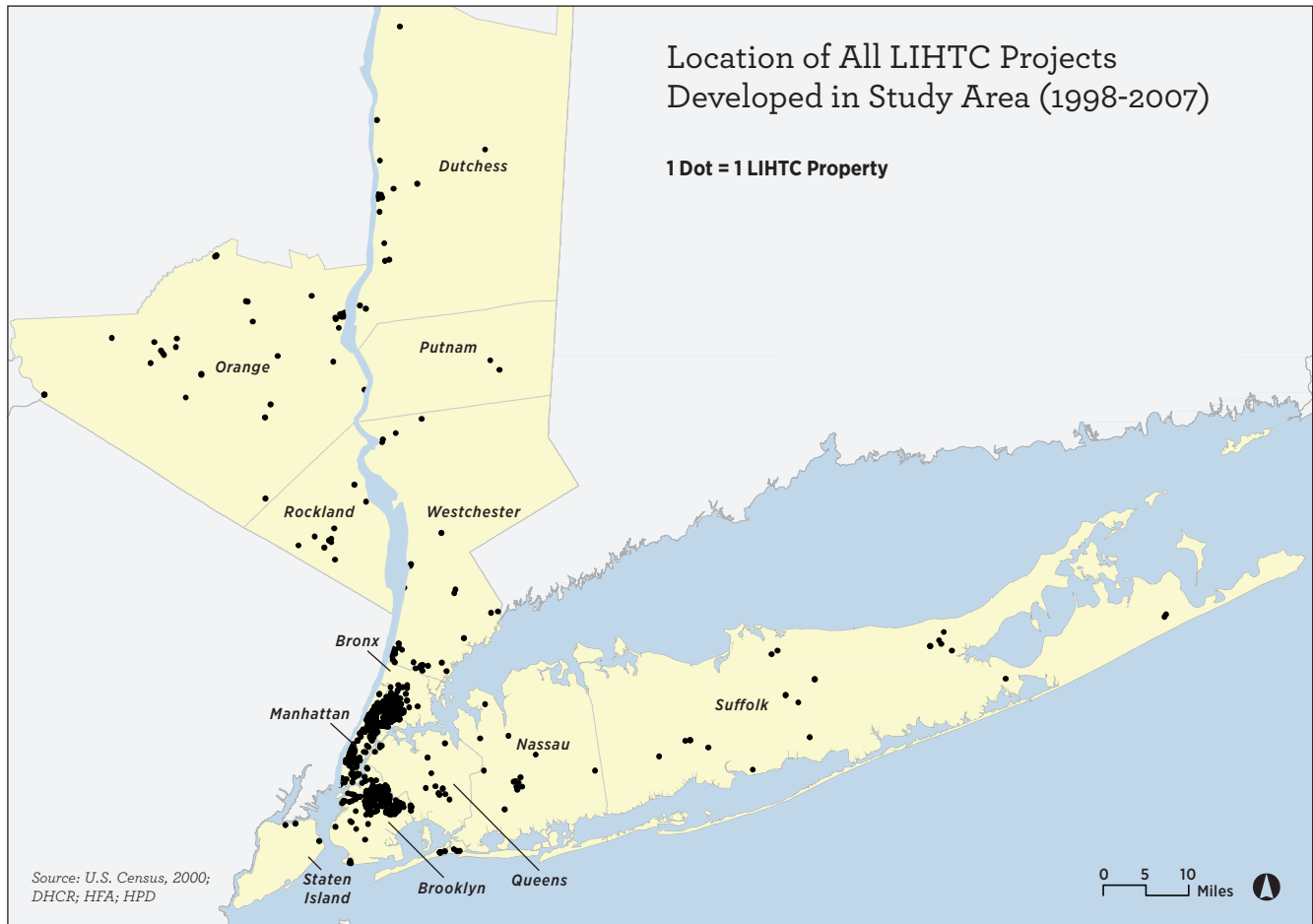
- “Low poverty” tract: less than 10% of the population lives in poverty
- “Moderate poverty” tract: between 10% and 20% of the population lives in poverty
- “High poverty” tract: between 20% and 30% of the population lives in poverty
- “Extreme poverty” tract: more than 30% of the population lives in poverty

Racial/Ethnic Composition

- “Minority” tract: less than 20% of residents are non-Hispanic whites
- “Predominantly minority” tract: between 20% and 50% of residents are non-Hispanic whites
- “Predominantly white” tract: between 50% and 80% of residents are non-Hispanic whites
- “White” tract: more than 80% of residents are non-Hispanic whites

DATA OVERVIEW

According to the data obtained by the FHJC from New York's three allocating agencies, over 1,200 LIHTC properties were placed into service during the 10-year period between 1998 and 2007.⁸⁷ In total, these projects comprise 69,276 housing units, of which 52,246, or 75%, are low-income units.⁸⁸ Units referenced in the below analysis, in tables and on maps, are low-income units, unless otherwise specified.



Map 4

Here are some key facts about the data on LIHTC units in the New York City region:

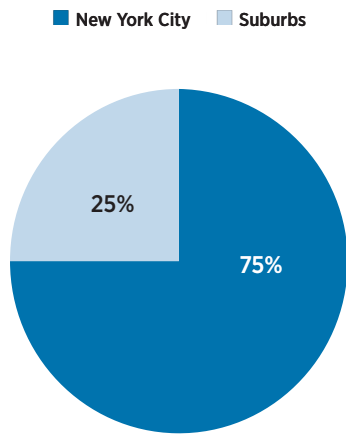
- Three quarters, or 39,011, of all low-income units were developed in New York City, and the remaining 25%, comprising 13,235 units, were created in the suburban counties.
- Almost half of all low-income units created in the suburban counties were reserved for elderly residents.⁸⁹
- Just under half of all low-income units were financed with competitive 9% tax credits, while 56% were financed with “as of right” 4% credits paired with tax-exempt bond financing.

87. In some cases, multiple “properties” may be considered part of a single development project.

88. Some sites have a mix of market-rate and low-income units.

89. As noted above, HPD, which allocates the majority of tax credits in New York City, did not provide data distinguishing elderly units from family units. Therefore, the siting of elderly versus family units is only reported here for the suburban counties.

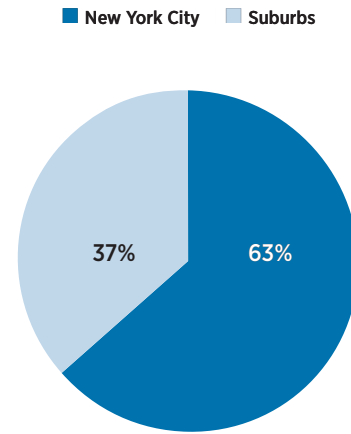
LIHTC Units by Sub-Region



TOTAL: 52,246

Figure 6

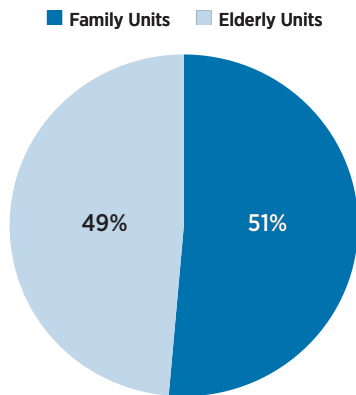
Population in Study Area (2000)



TOTAL: 12,689,665

Figure 7

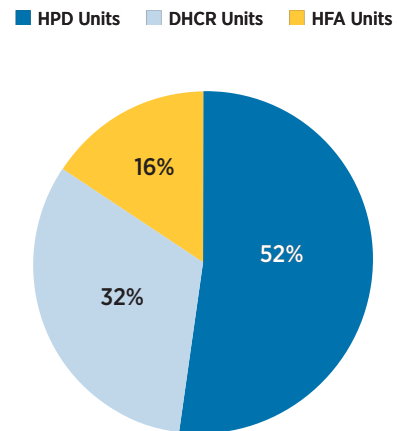
LIHTC Units by Project Type (Suburbs Only)



TOTAL: 13,837

Figure 8

LIHTC Units by Agency



TOTAL: 52,246

Figure 9

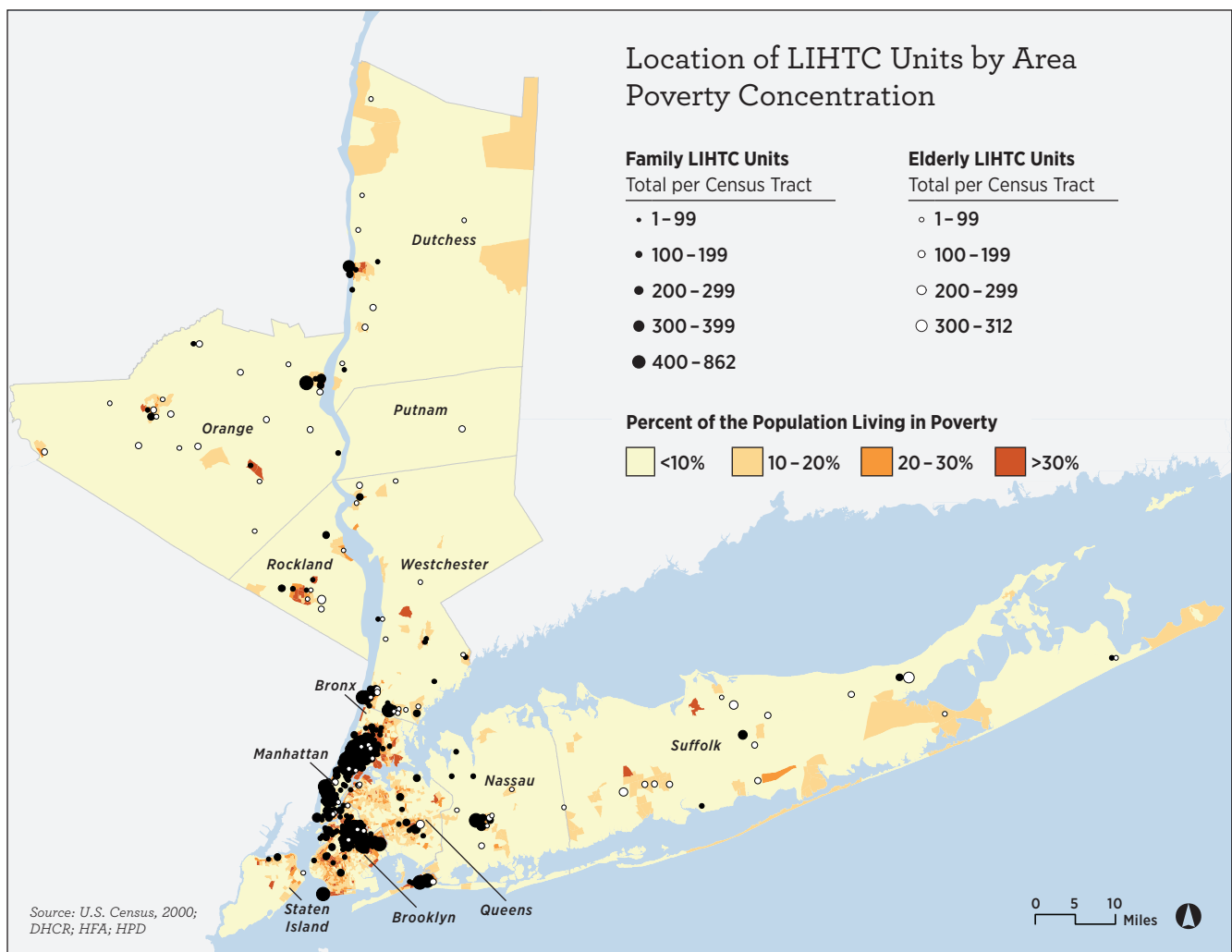
Source: U.S. Census, 2000; DHCR; HFA; HPD

- Approximately half of all low-income units were developed as part of new construction projects, and half were rehabilitation projects.
- Over half (52%) of all low-income units were financed with tax credits awarded by HPD for projects in New York City. DHCR provided credits for 32% of all low-income units, while HFA allocated credits for 16%.

LOCATION OF LIHTC HOUSING BY AREA POVERTY CONCENTRATION

The vast majority (71%) of low-income units placed into service during the study period were found to be located in areas of “high” or “extreme” poverty concentrations: 52% were in extreme-poverty tracts, and 19% were in high-poverty tracts. The remaining 29% were split equally between areas of “moderate” and “low” poverty concentration throughout the region. High- and extreme-poverty areas with the lion’s share of LIHTC units include

the New York City neighborhoods of Bedford-Stuyvesant, Brownsville, Harlem, the Lower East Side, and the South Bronx, as well as parts of Hempstead, Newburgh, Poughkeepsie, and Yonkers in the suburban counties. Low- and moderate-poverty areas with substantial LIHTC developments include Chelsea and Midtown West in Manhattan, while LIHTC developments in the suburbs appear to be relatively dispersed.



Map 5

Location of LIHTC Units by Area Poverty Concentration (New York City)

Family LIHTC Units

Total per Census Tract

- 1-99
- 100-199
- 200-299
- 300-399
- 400-862

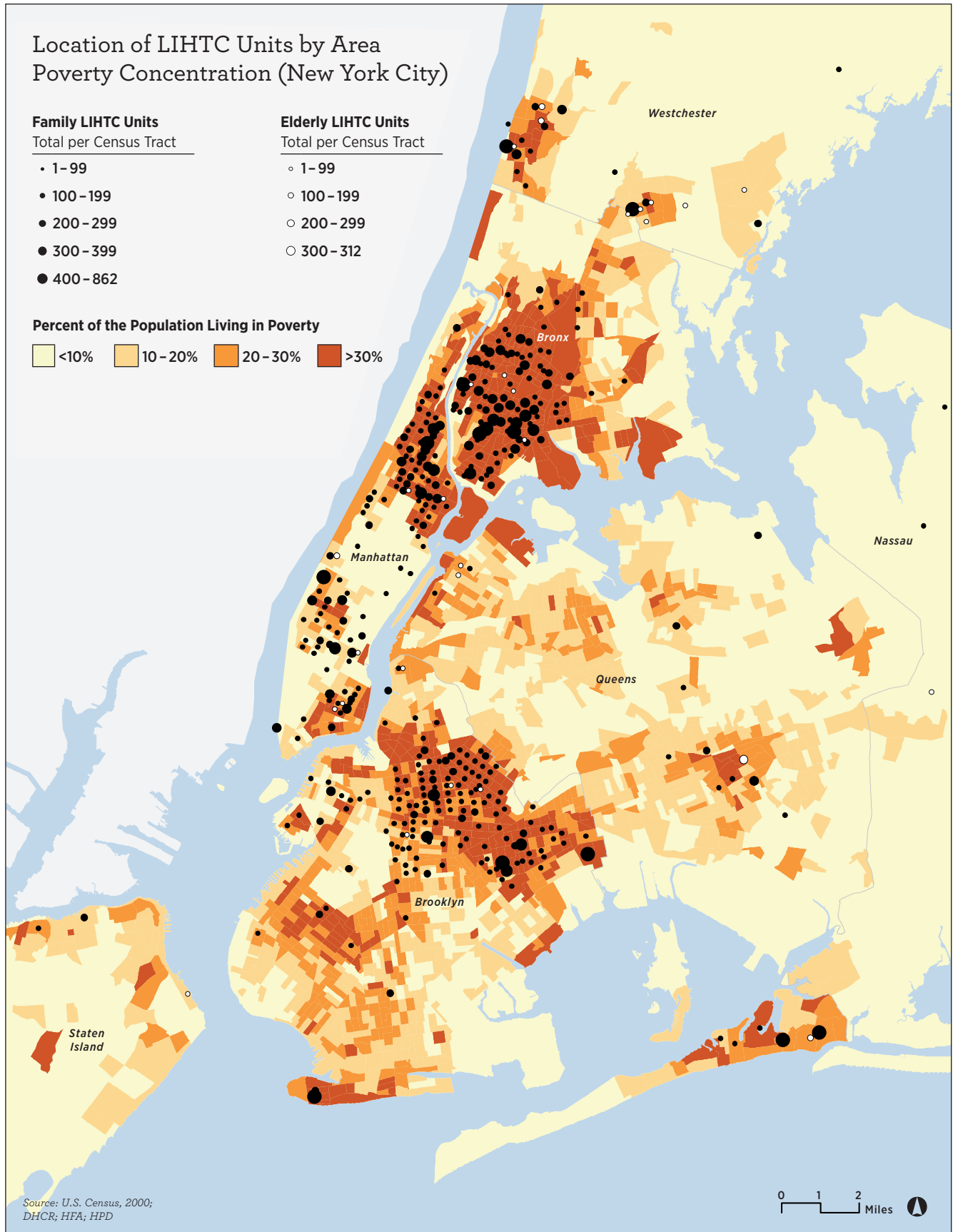
Elderly LIHTC Units

Total per Census Tract

- 1-99
- 100-199
- 200-299
- 300-312

Percent of the Population Living in Poverty

- <10%
- 10-20%
- 20-30%
- >30%



Source: U.S. Census, 2000;
DHCR; HFA; HPD

0 1 2 Miles

Map 6

NYC vs. Suburbs

The pattern is more pronounced in New York City, where 83% of all low-income units were created in high- or extreme-poverty neighborhoods, and a mere 4% were developed in low-poverty neighborhoods. By contrast, 44% of low-income units in the suburbs were sited in low-poverty neighborhoods, and only 37% were in areas of high or extreme poverty.

Family vs. Elderly

Part of the reason that the siting of LIHTC units in the suburban counties appears so much more dispersed than in New York City is due to the overwhelming number of elderly units that were developed in low-poverty suburban neighborhoods during this period. Over 60%

of all suburban low-income units restricted to elderly tenants were created in low-poverty neighborhoods, while only 14% of suburban elderly units were developed in areas of high or extreme poverty. By comparison, only 25% of suburban family units were sited in low-poverty tracts, and 59% were in high- or extreme-poverty tracts.

New Construction vs. Rehabilitation

Newly constructed low-income family units were distributed similarly to family units that were part of rehabilitation projects. More than 75% of new construction family units and 80% of rehab family units were sited in areas of high or extreme poverty, while less than 25% of each type of unit was located in low- or moderate-poverty neighborhoods.

Figures 10–14: Location of LIHTC Units by Area Poverty Concentration

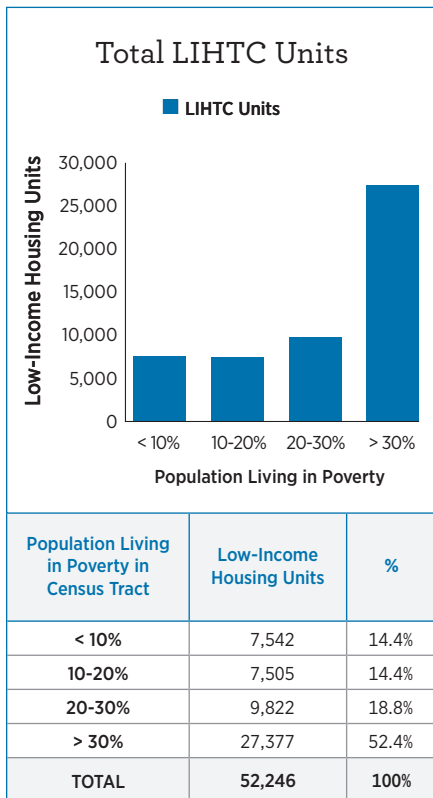


Figure 10

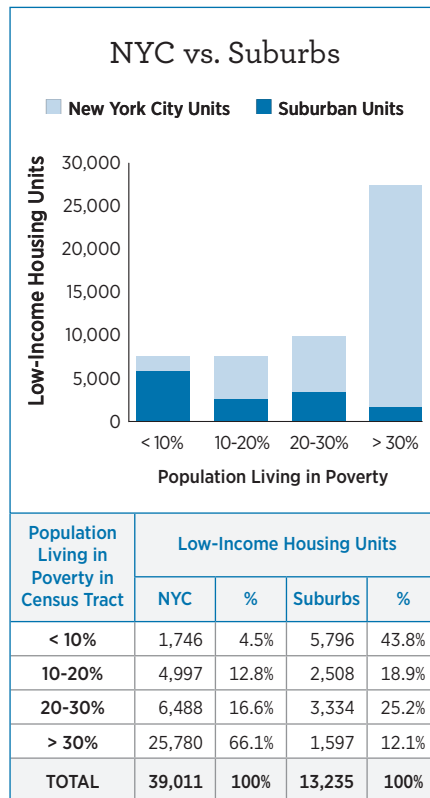


Figure 11

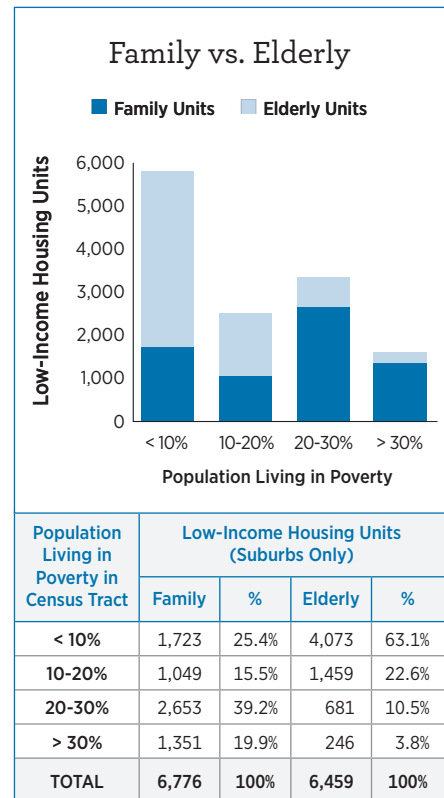


Figure 12

Allocating Agencies

Differences in how New York’s three allocating agencies awarded tax credits over the 10-year period are evident, as well. Compared to DHCR and HFA, HPD made the highest proportion of its allocations in poor neighborhoods: 86% of its total low-income units were developed in areas of high or extreme poverty, and only 2% of HPD units were built in low-poverty neighborhoods. By contrast, 35% of HFA’s units were developed in low-poverty tracts, and 42% were in high- or extreme-poverty areas. DHCR fell somewhere in the middle, with 62% of its units in high- or extreme-poverty tracts and 25% in low-poverty tracts.

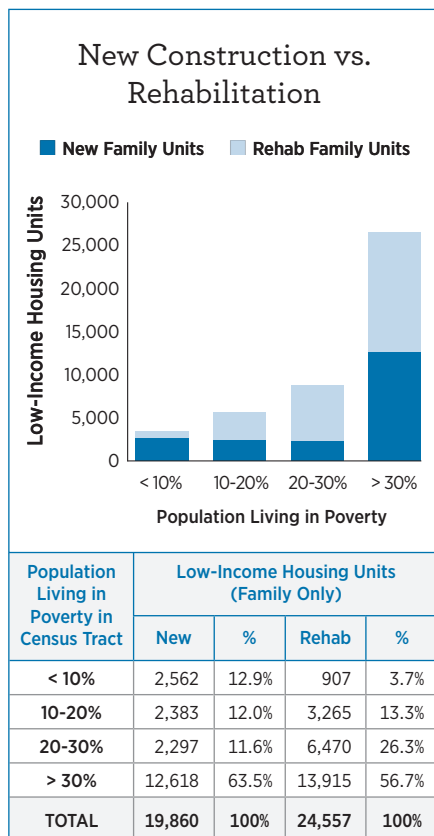


Figure 13

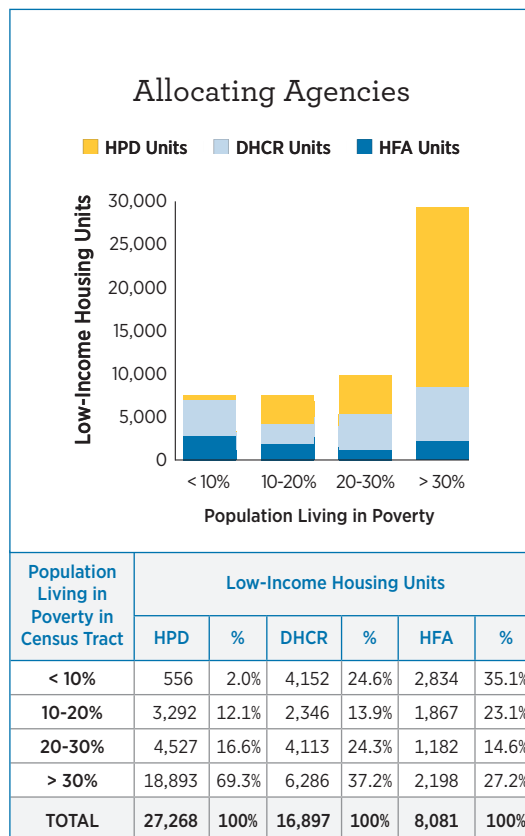


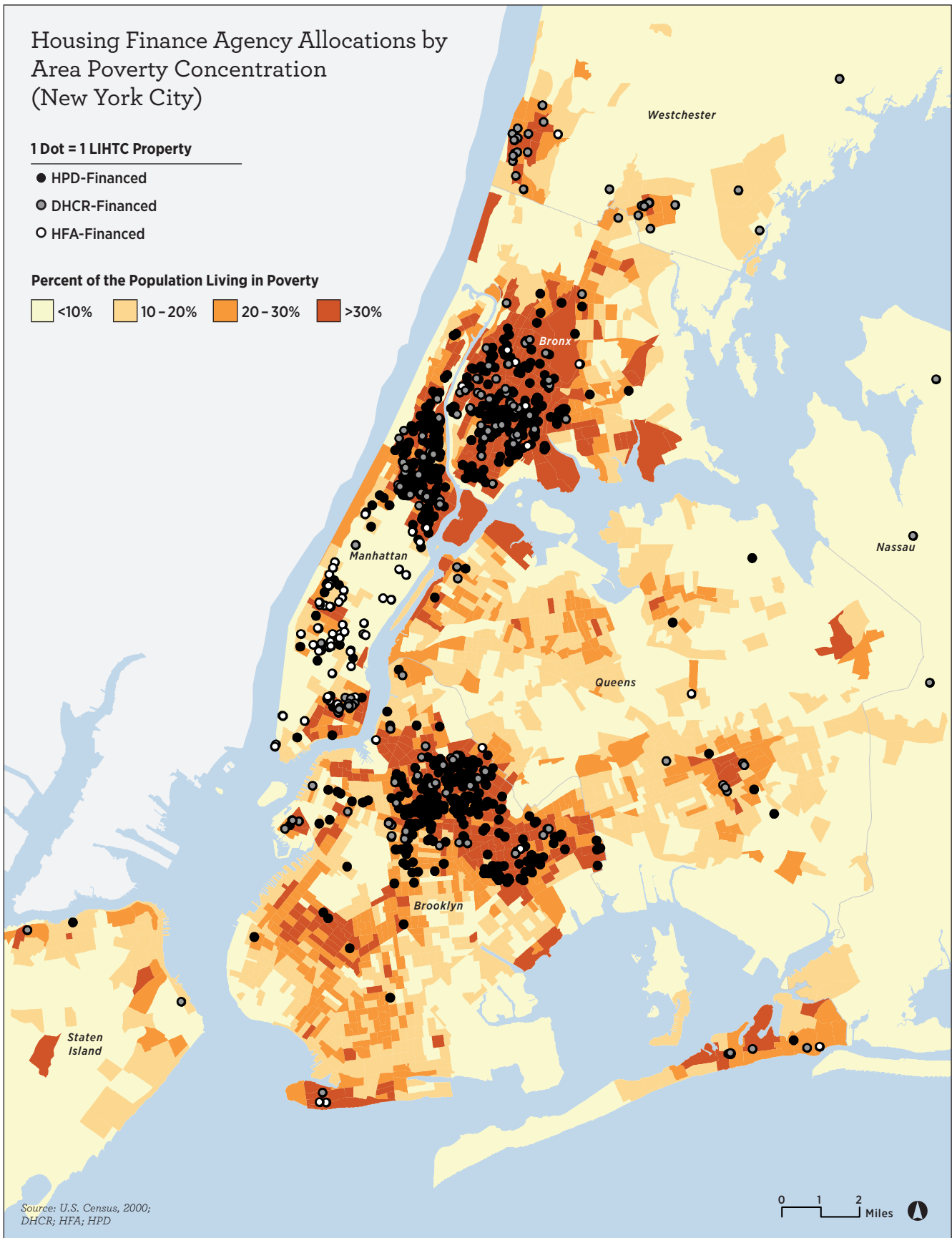
Figure 14

Housing Finance Agency Allocations by Area Poverty Concentration (New York City)

1 Dot = 1 LIHTC Property

- HPD-Financed
- DHCR-Financed
- HFA-Financed

Percent of the Population Living in Poverty

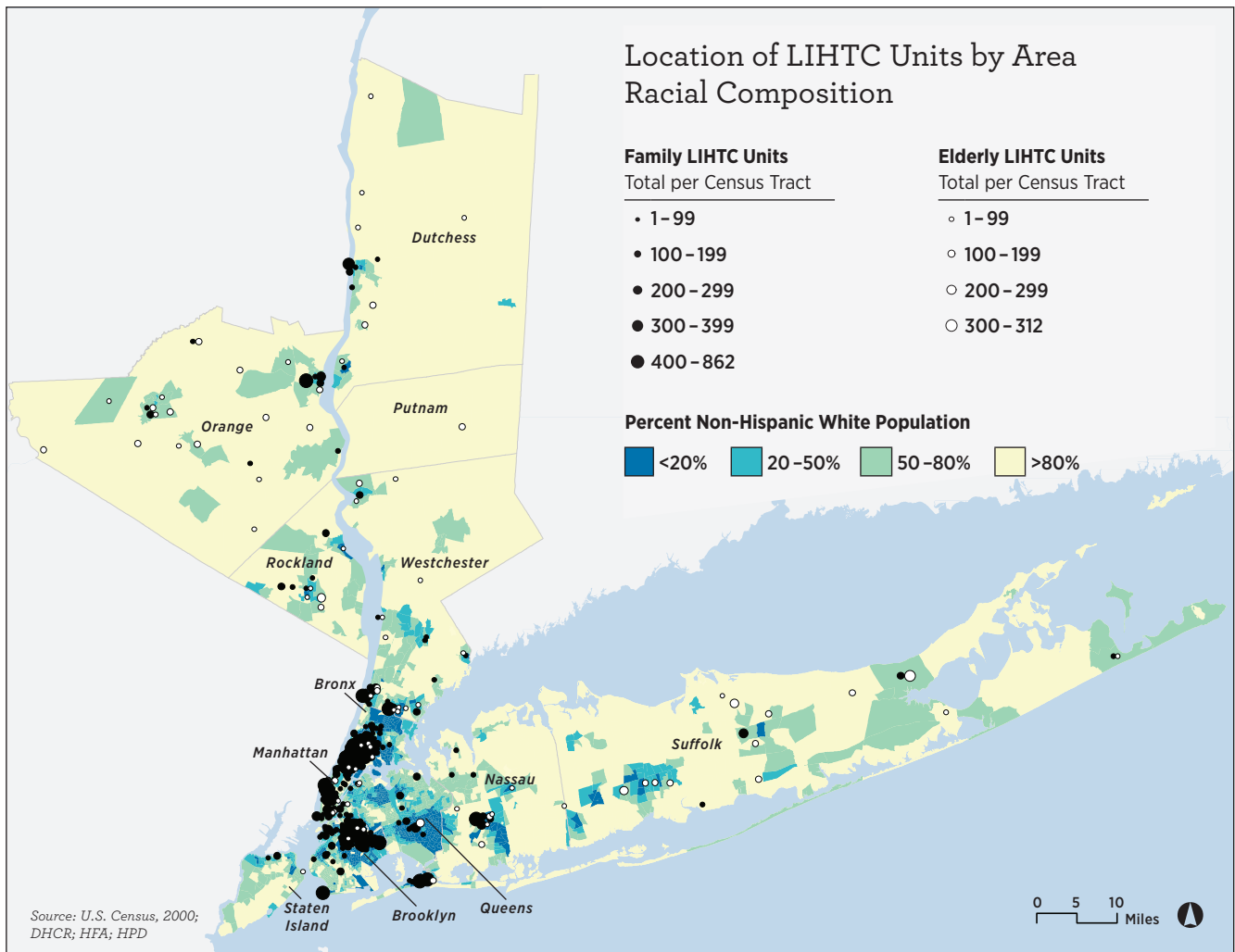


Source: U.S. Census, 2000; DHCR; HFA; HPD

Map 7

LOCATION OF LIHTC HOUSING BY AREA RACIAL/ETHNIC COMPOSITION

Over three-quarters, or 77%, of all low-income units placed into service during the study period were located in census tracts defined for the purposes of this study as “minority” or “predominantly minority”: 65% were in minority and 12% were in predominantly minority neighborhoods. Less than 8% of all low-income units were developed in “white” neighborhoods.



Map 8

Location of LIHTC Units by Area Racial Composition (New York City)

Family LIHTC Units Total per Census Tract

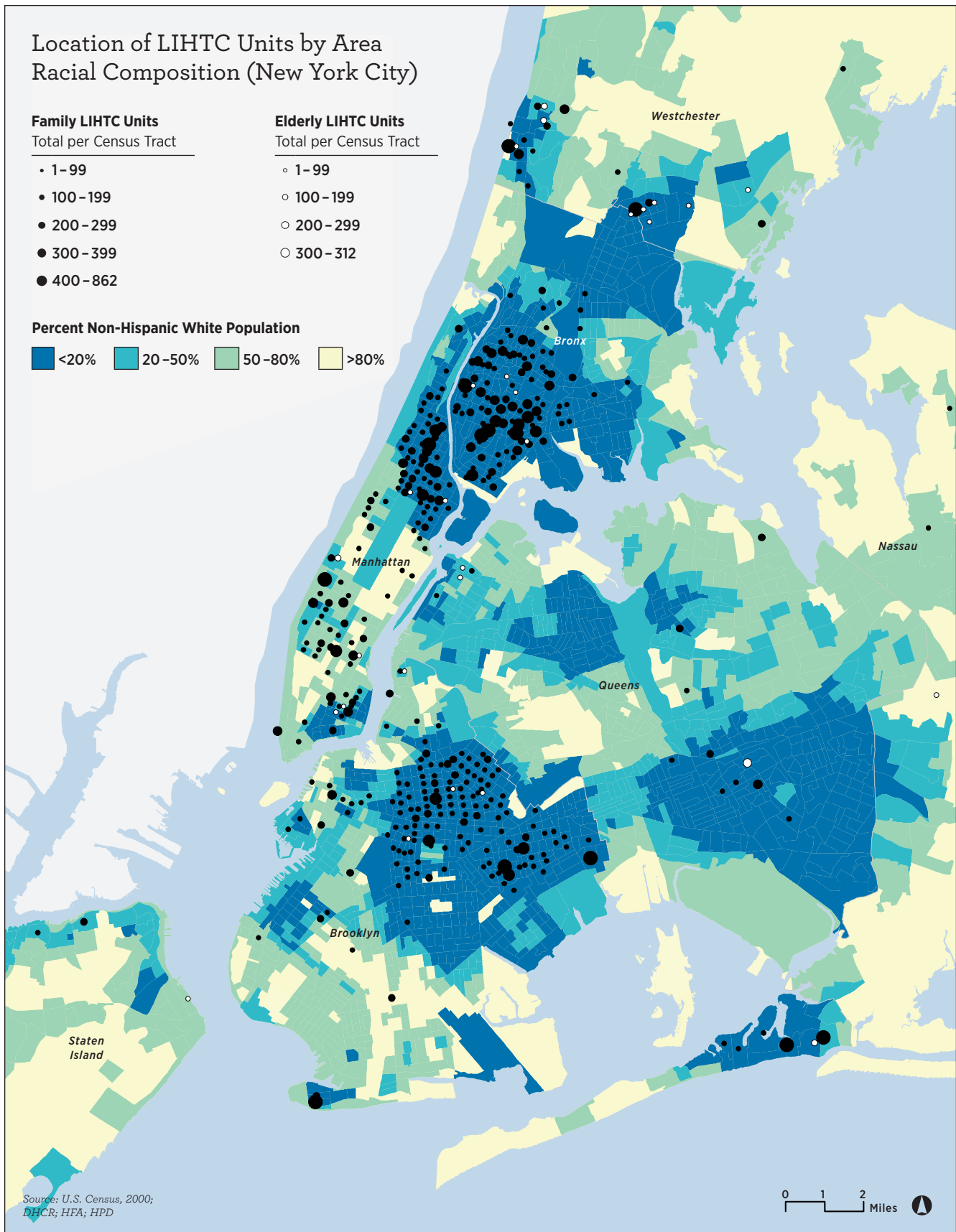
- 1-99
- 100-199
- 200-299
- 300-399
- 400-862

Elderly LIHTC Units Total per Census Tract

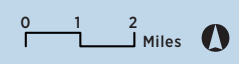
- 1-99
- 100-199
- 200-299
- 300-312

Percent Non-Hispanic White Population

- <20%
- 20-50%
- 50-80%
- >80%



Source: U.S. Census, 2000;
DHCR; HFA; HPD



Map 9

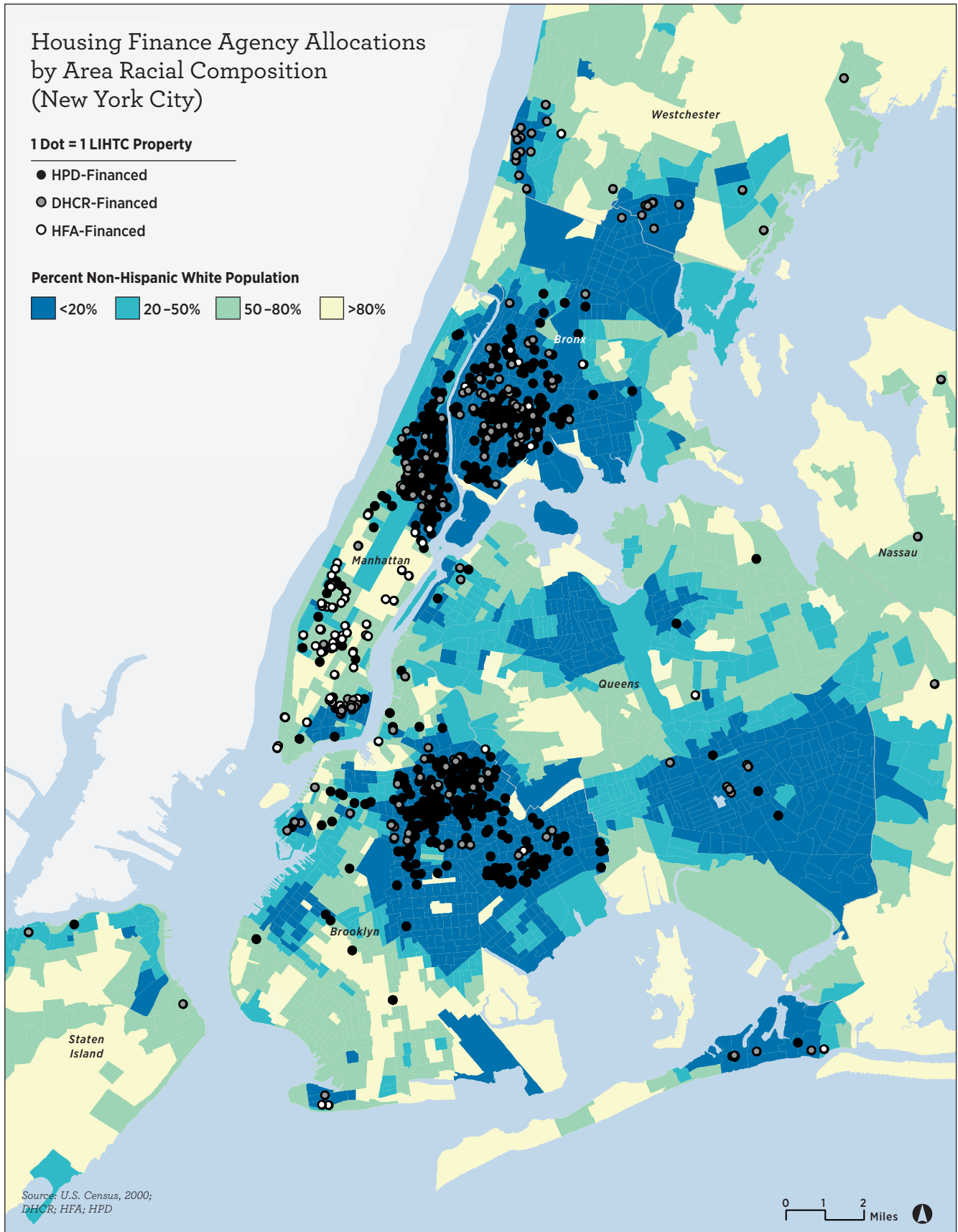
Housing Finance Agency Allocations by Area Racial Composition (New York City)

1 Dot = 1 LIHTC Property

- HPD-Financed
- DHCR-Financed
- HFA-Financed

Percent Non-Hispanic White Population

- <20%
- 20-50%
- 50-80%
- >80%



Source: U.S. Census, 2000;
DHCR, HFA, HPD

Map 10

NYC vs. Suburbs

The pattern is amplified in New York City, where 88% of all low-income units were developed in minority or predominantly minority neighborhoods. Less than 2% of low-income units were created in white tracts, and less than 11% were developed in predominantly white tracts. In the suburban counties, by contrast, LIHTC units were more evenly distributed, with 54% of all low-income units developed in white or predominantly white neighborhoods and 46% in minority or predominantly minority tracts.

States that collect racial occupancy data report that the percentage of racial minorities residing in LIHTC units is significantly higher than the percentage of racial minorities in the general population.⁹⁰ There is no reason to believe the pattern is any different in the New

York City region. This is particularly true in New York City, where developers are required by HPD to apply a preference for renting 50% of low-income units to current residents of the community district where the housing is located.⁹¹ Since nearly 90% of the LIHTC units created in New York City from 1998 through 2007 were located in minority or predominantly minority areas, it is reasonable to conclude that low-income minority renters are likely to occupy a majority of these units. These families have few options to live outside of high-poverty, minority areas.

Family vs. Elderly

Again, while the siting of LIHTC units in the suburbs appears more evenly dispersed than in New York City, this observation must be qualified by the fact that most of the low-income units that were developed in white or predominantly white suburban neighborhoods were

Figures 15–19: Location of LIHTC Units by Area Racial/Ethnic Composition

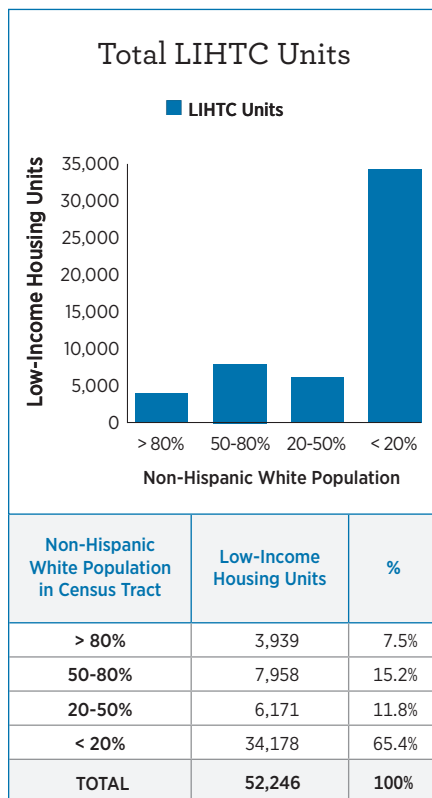


Figure 15

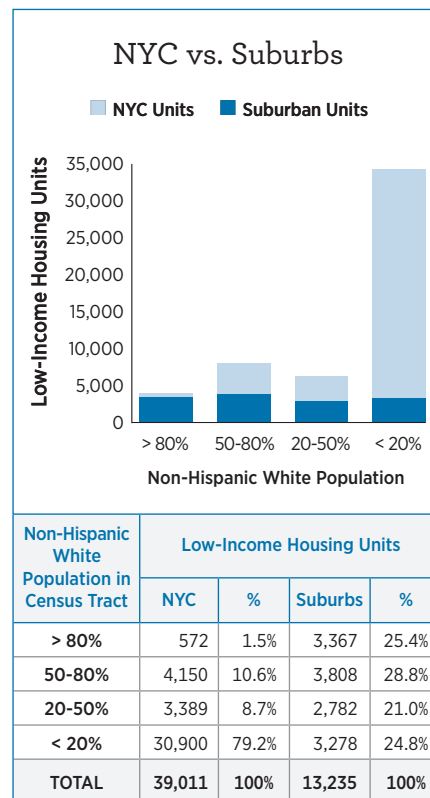


Figure 16

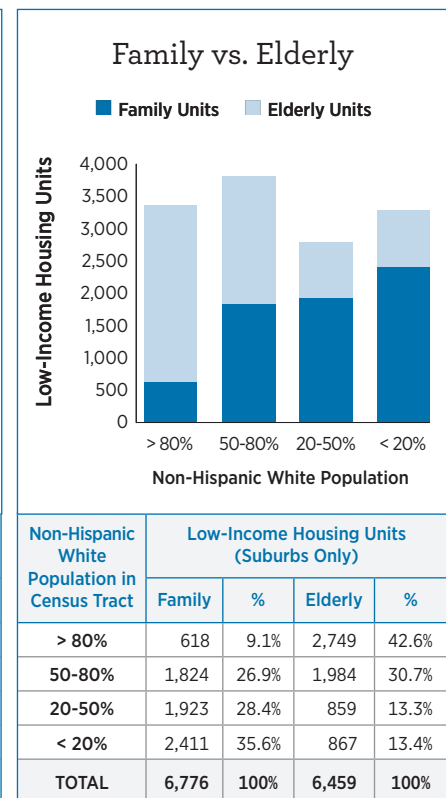


Figure 17

90. Horn and O'Regan. 2011. 21-23, Table 3.

91. NYC HDC and NYC HPD. March 2012. "Marketing Guidelines," NYC Housing Development Corporation and NYC Housing Preservation and Development, 27. <http://www.nyc.gov/html/hpd/downloads/pdf/Marketing-Guidelines.pdf>.

elderly units. Approximately 74% of all elderly low-income units were created in white or predominantly white suburban tracts. The inverse is true for family units, where 36% of family units were created in white or predominantly white suburban tracts and 64% were located in minority or predominantly minority tracts.

New Construction vs. Rehabilitation

As in the analysis by poverty concentration, there was little distinction between the siting of newly constructed family units and rehabilitation family units. More than three-quarters of both project types were sited in minority or predominantly minority tracts. Less than 20% of new family units and only about 15% of family rehab units were created in white or predominantly white areas.

Allocating Agencies

The vast majority (91%) of HPD units were sited in minority or predominantly minority areas, and 9% were located in white or predominantly white neighborhoods. By contrast, just over half of HFA's units were developed in white or predominantly white tracts. DHCR's allocations again split the middle: more than two-thirds of its units were in minority or predominantly minority tracts, and nearly a third were created in white or predominantly white tracts.

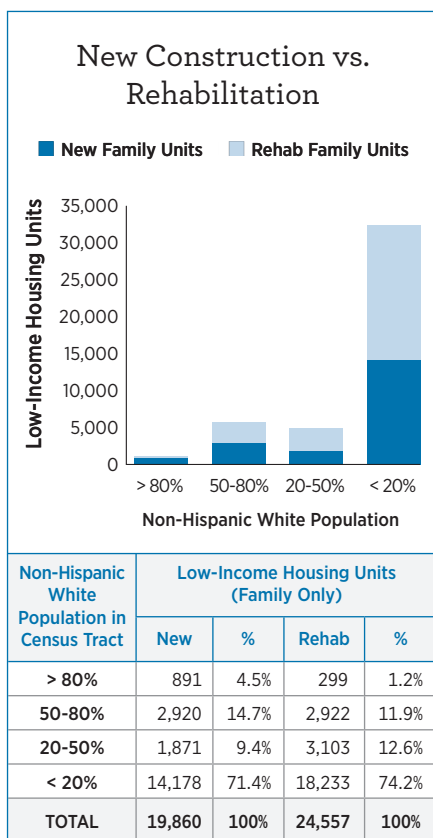


Figure 18

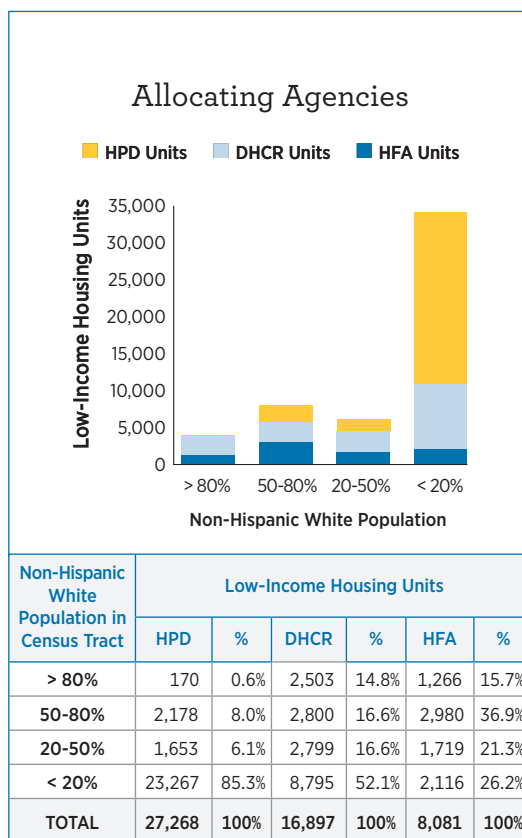


Figure 19

Conclusions and Recommended Action Steps

This report finds that affordable family housing units produced with Low Income Housing Tax Credits in the 12-county region were concentrated in poor and predominantly minority neighborhoods, mostly in New York City. This is problematic for two reasons. First, government policies that intentionally or effectively limit housing choices available to lower-income minority families, maintain residential racial segregation, and increase poverty concentration run afoul of the duty to affirmatively further fair housing under the Fair Housing Act. Second, apart from the need to comply with civil rights laws, the growing body of evidence in social science research indicates that public policies are needed to provide lower-income minority families with greater choice, including the opportunity to access housing in low-poverty areas that frequently offer greater employment opportunities, high-quality educational opportunities, access to better healthcare, and a host of other life opportunities, benefits, and amenities.

Specific policies maintained by the U.S. Department of Treasury and New York's three housing finance agencies should be reviewed and amended to ensure that the LIHTC program operates in a manner that:

1. Complies with the federal Fair Housing Act and the duty to affirmatively further fair housing;
2. Expands housing choice for lower-income and minority family households;
3. Deconcentrates poverty and reduces residential racial segregation;

4. Proactively identifies and eliminates barriers to developing tax credit housing for families in low-poverty areas; and
5. Provides incentives to promote the development of mixed-income housing that includes both affordable and market-rate units.

The following recommendations contain both procedural and substantive advice, while some are also remedial. Given the extent to which the placement of LIHTC developments has limited the housing and locational choices available to low-income minority families in the past, corrective steps must be taken in the future to produce a more balanced distribution of affordable housing units throughout the region.

RECOMMENDATIONS FOR U.S. DEPARTMENT OF TREASURY

Treasury needs to promulgate civil rights regulations to govern its programs that finance the production of affordable housing, including the Low Income Housing Tax Credit program. These regulations should:

- Encourage the siting of family developments so that they expand housing choices available to lower-income families, by ensuring that affordable housing is developed in low-poverty areas.

- Mandate the use of affirmative marketing and tenant selection plans to ensure that affordable housing developed under Treasury programs is operated in an inclusive and nondiscriminatory manner that, among other things, attracts populations least likely to apply.⁹²
- Impose a duty on each housing finance agency to collect and maintain occupancy data by site on race and national origin, as well as the number of households using Housing Choice Vouchers.
- Require that each housing finance agency establish and maintain an enforcement mechanism to ensure that LIHTC developments are not refusing to rent to applicants with Housing Choice Vouchers.
- Define the essential elements of a “concerted community revitalization plan.” Any plan should place a high burden on the developer to show how the proposed housing will contribute to revitalization and explain how it is objectively achievable within a specific time frame.

Treasury should also work with HUD and the Department of Justice to fully implement all provisions of the interagency Memorandum of Understanding (LIHTC MOU) on the Low Income Housing Tax Credit program that was signed in August 2000.⁹³

RECOMMENDATIONS FOR NEW YORK TAX CREDIT ALLOCATION AGENCIES

The three tax credit allocation agencies that serve the New York City region need to:

- Maintain records showing whether affordable housing developments that have been awarded federal and/or state tax credits are family or elderly housing.
- Review data on the location of federal and state LIHTC family and elderly developments based on area poverty rates and racial composition, on an annual basis, to evaluate whether the LIHTC programs are affirmatively furthering fair housing. Conduct a similar review of the location of housing developments supported by the state affordable housing trust fund.
- Require owners of affordable housing developments awarded federal and/or state tax credits to collect and maintain occupancy and applicant data by race and national origin, as well as the number of households using Housing Choice Vouchers.
- Review occupancy and applicant data collected by owners to evaluate whether LIHTC housing is being provided on a nondiscriminatory basis and whether the LIHTC programs are affirmatively furthering fair housing.
- Conduct on-site inspections of newly constructed affordable housing developments to ensure compliance with state and federal accessibility requirements.

92. For a more detailed discussion of recommendations for marketing and tenant selection in the LIHTC program, see Megan Haberle, Ebony Gayles, and Philip Tegeler, December 2012, *Accessing Opportunity: Affirmative Marketing and Tenant Selection in the LIHTC and Other Housing Programs*, PRRAC Policy Brief.

93. The LIHTC MOU commits the three federal agencies to enhanced and coordinated FHA enforcement activities: fair housing training for state housing finance agencies, developers, tax credit syndicators, architects, and others; interagency cooperation on research, technical assistance, and eliminating unlawful barriers to housing choice voucher holders; annual interagency meetings to discuss efforts to increase civil rights compliance; and other similar activities. Letters sent to Treasury, HUD, and Justice in recent years by civil rights organizations indicate that the agencies have failed to fulfill these commitments. See “Civil Rights Mandates in the Low Income Housing Tax Credit Program” at http://www.prrac.org/full_text.php?text_id=1035&item_id=9104&newsletter_id=0&header=Current%20Projects (2013).

- Utilize fair housing testing to monitor compliance with fair housing laws.
- Incorporate threshold criteria into each QAP⁹⁴ that:
 - Prohibits the use of residency preferences or community board preferences unless a demographic analysis provided by the developer demonstrates that the application of such preferences will not discriminate and/or perpetuate residential racial segregation;
 - Requires applications to include a detailed affirmative marketing plan designed to attract populations least likely to apply; and
 - Ensures an application will be considered even if local officials state their opposition to or fail to indicate their support for a particular project.
- Incorporate *substantial* scoring incentives in each QAP and provide a multiplier as part of a project's qualified basis to encourage the development of:
 - Family housing in low-poverty and non-minority areas;
 - Mixed-income housing (market-rate and low-income units);
 - Family housing in areas with no concentration of LIHTC family housing or other subsidized family housing units; and
 - Family housing in areas where land costs are higher.
- Eliminate scoring incentives for local government approval or support.

- Limit scoring incentives for affordable housing developments in QCTs, and include a revitalization component with a very high threshold, to make it unlikely that such housing would further concentrate poverty or perpetuate residential racial segregation.

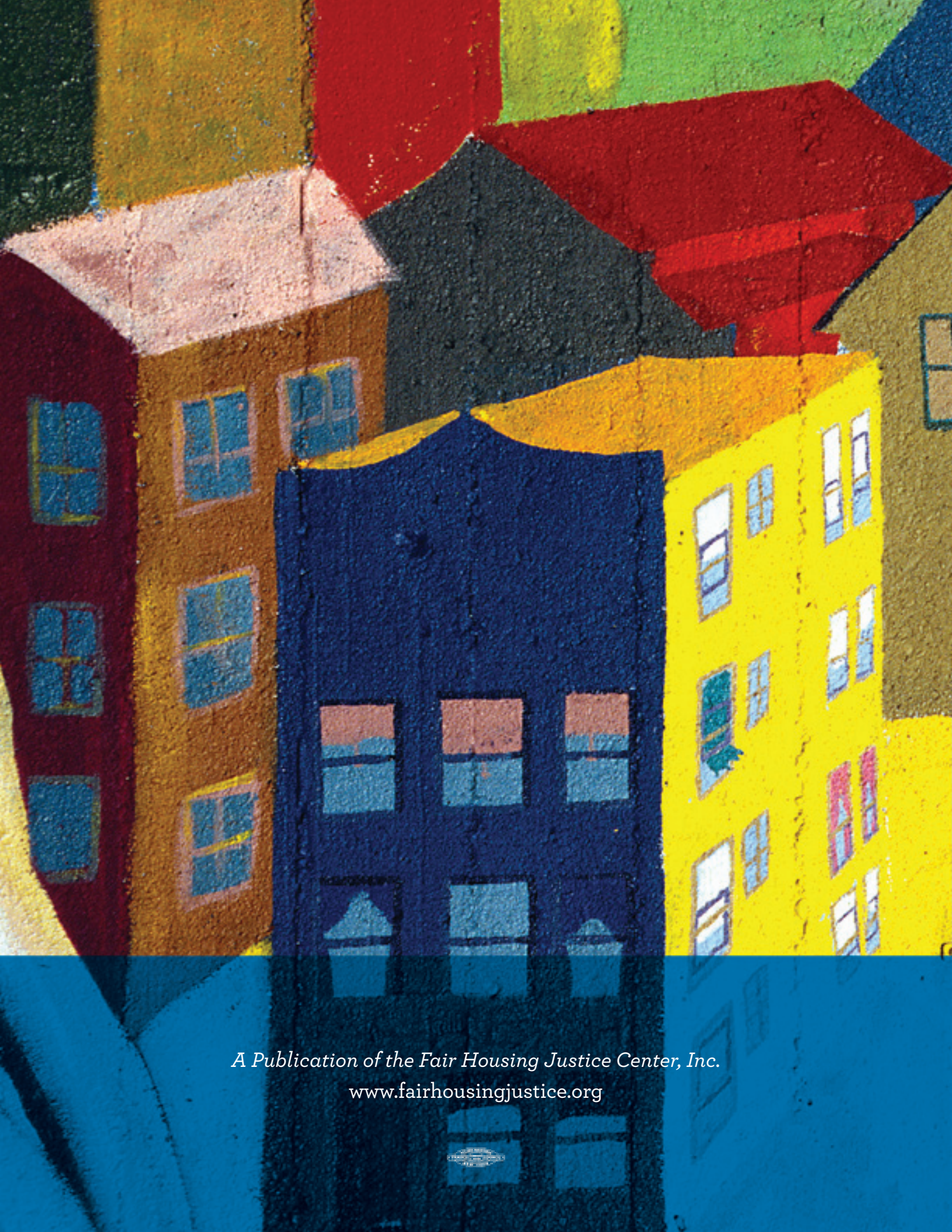
It is also strongly recommended that the three tax credit allocation agencies in New York meet periodically to share information, analyze aggregate data on affordable housing developments by poverty and racial composition of areas, and assess their progress in affirmatively furthering fair housing in the region.

* * *

Most of the affordable housing units produced between 1998 and 2007 with federal tax credits in the New York City region were located in predominantly minority areas with higher poverty rates. Given this concentration, eligible minority families were presented few opportunities to move to low-poverty areas that may have provided greater educational, employment, and other opportunities. A central question raised by this report is whether the Department of Treasury and the three New York tax credit allocation agencies have been meeting their duty to affirmatively further fair housing. The report provides no evidence that the LIHTC program has reduced residential racial segregation or expanded the range of housing choices available to lower-income minority families.

94. For a more detailed discussion of the relationship between QAP criteria and the location of LIHTC units, see Jill Khadduri's *Creating Balance in the Locations of LIHTC Developments: The Role of Qualified Allocation Plans*, PRRAC and Abt Associates, Inc., at http://www.prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf (2013).





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