

**FALL 2020**  
**NEW YORK UNIVERSITY**  
**SCHOOL OF LAW**

“How Place-Based Tax Incentives Can Reduce Economic  
Inequality.”

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**October 20, 2020**

Via Zoom

Time: 2:00 – 3:50 p.m. EST

Week 9

## **SCHEDULE FOR FALL 2020 NYU TAX POLICY COLLOQUIUM**

(All sessions meet online on Tuesdays, from 2:00 to 3:50 pm EST)

1. Tuesday, August 25 – Steven Dean, NYU Law School. “A Constitutional Moment in Cross-Border Taxation.”
2. Tuesday, September 1 – Clinton Wallace, University of South Carolina School of Law. “Democratic Justice in Tax Policymaking.”
3. Tuesday, September 8 – Natasha Sarin, University of Pennsylvania Law School. “Understanding the Revenue Potential of Tax Compliance Investments.”
4. Tuesday, September 15 – Adam Kern, Princeton Politics Department and NYU Law School. “Illusions of Justice in International Taxation.”
5. Tuesday, September 22 – Henrik Kleven, Princeton Economics Department. “The EITC and the Extensive Margin: A Reappraisal.”
6. Tuesday, September 29 – Leandra Lederman, Indiana University Maurer School of Law. “Of Risks and Remedies: Best Practices in Tax Rulings Transparency.”
7. Tuesday, October 6 – Daniel Shaviro, NYU Law School. “What Are Minimum Taxes, and Why Might One Favor or Disfavor Them?”
8. Tuesday, October 13 – Gabriel Zucman, University of California, Berkeley. “The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts.”
9. Tuesday, October 20 – Michelle Layser, University of Illinois College of Law. “How Place-Based Tax Incentives Can Reduce Economic Inequality.”
10. Tuesday, October 27 – Steve Rosenthal and Theo Burke, Urban-Brookings Tax Policy Center. “Who’s Left to Tax? US Taxation of Corporations and their Shareholders.”
11. Tuesday, November 10 – Owen Zidar, Princeton Economics Department. “The Tax Elasticity of Capital Gains and Revenue-Maximizing Rates.”
12. Tuesday, November 17 – Abdoulaye Ndiaye, NYU Stern Business School. “Redistribution With Performance Pay.”
13. Tuesday, November 24 – Lilian Faulhaber, Georgetown Law School. “Searching for Coherence: The Overuse of Excess Returns and Excess Profits.”
14. Tuesday, December 1 – Erin Scharff, Arizona State Sandra Day O’Connor College of Law. “Revisiting Local Income Taxes.”

# HOW PLACE-BASED TAX INCENTIVES CAN REDUCE GEOGRAPHIC INEQUALITY

Michelle D. Laysen\*

## INTRODUCTION

Differences among geographic locations have been causally linked to disparate economic, health, and educational outcomes.<sup>1</sup> As a result of these geographic differences—referred to here as geographic inequality—otherwise similarly situated individuals may exhibit disparate outcomes due to their location of residence. Tax incentives feature prominently among the tools used by federal, state, and local governments to improve economic conditions in disadvantaged geographies.<sup>2</sup> However, no standard exists to describe when, where, and how to design tax incentives that can help reduce geographic inequality. This Article establishes a standard for designing place-based tax incentives that can reduce geographic inequality in urban geographies.<sup>3</sup>

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\* Assistant Professor of Law, University of Illinois College of Law. Versions of the draft were presented at: the Chicagoland Junior Scholars Works-in-Progress Conference; the Loyola Law School, Los Angeles Tax Policy Colloquium; the Marquette University Law School Faculty WIP Workshop; the Indiana University Maurer School of Law Tax Policy Colloquium; and the ABA Tax Section Annual Meeting. This Article has benefited from thoughtful feedback from Professors Ellen Aprill, Kenworthy Bilz, Samuel Brunson, Christian Buset, Edward W. De Barbieri, Sarah Fox, David Gamage, Leandra Lederman, Alexander Lemann, Jeremy McClane, Katherine Pratt, Arden Rowell, Theodore P. Seto, Nicola Sharpe, Gladriel Shobe, Susannah Tahk, Lesley Wexler, and Verity Winship.

<sup>1</sup> See generally PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* (2013) (describing neighborhood-level place-based disparities at the intra-urban level); Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, *Duke L.J.* (forthcoming 2020) (describing regional disparities between mid-sized cities and megacities, and between urban and rural geographies).

<sup>2</sup> Sitaraman, Ricks & Serkin, *supra* note 1, at 36.

<sup>3</sup> Tax incentives may also be used to address regional disparities, such as geographic inequality between urban and rural geographies, between urban and suburban geographies, or between thriving and struggling metropolitan cities. Each of these contexts is likely to present unique challenges distinct from those described in this Article. Though many, if not most, of the principles described in this Article

In urban geographies, tax incentives are frequently used to encourage private investment in low-income areas.<sup>4</sup> These tax expenditures represent a significant share of government spending on affordable housing and community development policies.<sup>5</sup> However, despite their goal to increase economic activity in struggling places, many of these tax incentives lack any clear objective to benefit residents of targeted communities through place-based improvements.<sup>6</sup> A recent example is the new Opportunity Zones tax incentive,<sup>7</sup> which has been criticized for lacking safeguards for low-income communities.<sup>8</sup>

The stakes are high. The new Opportunity Zones law alone could drive as much as \$100 billion in capital investments into designated low-income areas.<sup>9</sup> Critics of the law—anti-poverty watchdog groups, affordable housing advocates, and many academic observers—worry that all that capital will do more harm than good by further enriching the wealthy while fueling gentrification of low-income neighborhoods.<sup>10</sup> But the Department of Housing and Urban Development Secretary Ben Carson has defended the new Opportunity Zones law, saying that “rich people are going to get

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are likely to be generally relevant beyond the intra-urban context, further research would be needed to fully evaluate whether and how to place-based tax incentives can reduce other types of geographic inequality.

<sup>4</sup> See generally, Michelle D. Laysner, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform*, 2019 WISC. L. REV. 745 (2019) [hereinafter Laysner, *Pro-Gentrification Origins*] (describing the history of place-based tax incentives and the current state of the law).

<sup>5</sup> See *infra* Part III.A.1.

<sup>6</sup> See generally Laysner, *Pro-Gentrification Origins*, *supra* note 1 (describing the history of place-based tax incentives).

<sup>7</sup> I.R.C. 1400Z-1, 1400Z-2. The Opportunity Zones incentive was introduced in the Tax Cuts and Jobs Act of 2017. See The Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115–97 (2017).

<sup>8</sup> HOWARD WIAL, WHAT IT WILL TAKE FOR OPPORTUNITY ZONES TO CREATE REAL OPPORTUNITY IN AMERICA’S ECONOMICALLY DISTRESSED AREAS 1 (2019), [http://icic.org/wp-content/uploads/2019/04/ICIC\\_OZ\\_PolicyBrief.pdf](http://icic.org/wp-content/uploads/2019/04/ICIC_OZ_PolicyBrief.pdf).

<sup>9</sup> Jon Banister, *Investors Lining Up to Pour Billions into Opportunity Zones*, BISNOW, Oct. 4, 2018, <https://www.bisnow.com/national/news/economic-development/investors-lining-up-to-pour-money-into-opportunity-zones-93572>.

<sup>10</sup> See Dane Stangler, *Turning Opportunity Zones into Real Opportunities Launch Pad*, FORBES, Feb. 6, 2019, available at <https://www.forbes.com/sites/danestangler/2019/02/06/turning-opportunity-zones-into-real-opportunities-with-launch-pad#793d49b73bfe>.

richer anyway . . . They're going to invest their money in something. So why not induce them to invest that money into a place that is traditionally economically neglected? And that becomes a win-win for everyone.”<sup>11</sup>

But what, exactly, would constitute a “win” for low-income communities? This Article argues that the primary way that tax incentives can benefit low-income communities is by addressing geographic inequality itself. As this Article will explain, differences among places—their proximity to employers, their built environment, their institutions and local infrastructure—constitute spatial conditions that affect residents’ social and economic outcomes.

Economists and tax scholars often prefer people-based policies, which provide direct assistance to individuals (such as cash or rental vouchers) as a solution to geographic inequality.<sup>12</sup> These policies “focus primarily on lowering barriers to exit” for individuals.<sup>13</sup> However, people-based policies are insufficient to remedy geographic inequality.<sup>14</sup> Though they may lead to more equal outcomes for those who move out of disadvantaged areas, they fail to address the underlying causes of neighborhood disadvantage. In other words, geographic inequality will remain, and it will continue to affect those who are unable or unwilling to leave.<sup>15</sup>

In contrast, place-based policies, which include “direct public investment, tax benefits for businesses and individuals, and deregulation”

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<sup>11</sup> Brian Faler, *GOP's Love-Hate of Tax Credit*, POLITICO, Aug. 26, 2017, <http://politi.co/1dph9cE>.

<sup>12</sup> Sitaraman, Ricks & Serkin, *supra* note 1, at 36.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (arguing that mobility-focused people-based strategies “do not solve—and instead exacerbate . . . consequences of geographic inequality.”) *See also* Mark D. Partridge & Dan S. Rickman, *Place-based policy and rural poverty: insights from the urban spatial mismatch literature*, 1 CAMBRIDGE J REGIONS ECON. SOC. 131, 131, 133 (2008) (explaining that “the standard argument among economists is that people-based policies of supporting working training and facilitating household mobility are far superior to possibly wasteful place-based policies” but noting that in some areas “poverty remains stubbornly high even with the large expenditures on people-based policies, suggesting that it would be helpful to assess if place-based policies could be beneficial and under what circumstances.”). Partridge and Rickman argue that place-based policies may be indicated in places where geographic inequality, such as spatial mismatch, exists. *Id.* at 133. Spatial mismatch and other theories of geographic inequality are discussed in Part III of this Article.

<sup>15</sup> *See* Sitaraman, Ricks & Serkin, *supra* note 1, at 37.

aim to “help improve economic conditions in long-suffering areas.”<sup>16</sup> Since “there will always be people living in places left behind,”<sup>17</sup> there is an enduring need for tools like place-based tax incentives that can reduce geographic inequality itself by changing spatial features that impact residents’ economic and health outcomes. In doing so, they can help improve conditions for people who remain unable to move despite the efforts of people-based policies. For these reasons, this Article argues in favor of place-based strategies in general, and well-structured place-based tax incentives in particular.

At this point, a definition may be helpful. In tax policy discourse, the phrase “place-based” has been used broadly to describe any tax law that is spatially differentiated.<sup>18</sup> Here, I have defined “place-based tax incentives” more narrowly as “tax incentives used to drive investment to low-income areas.”<sup>19</sup> This definition, which describes a subset of spatially-differentiated tax expenditures, is used to situate these tax incentives within the broader context of nontax place-based strategies, which include “direct public investment, tax benefits for businesses and individuals, and deregulation.”<sup>20</sup> Place-based strategies prioritize investments in “specific communities or locations, often with the explicit goal of revitalizing entrenched pockets of poverty.”<sup>22</sup>

Like other place-based strategies, place-based tax incentives can be used to improve the economies of urban, rural, and suburban areas in economic distress. However, in practice, place-based tax incentives have often failed to benefit low-income communities in targeted geographies.<sup>25</sup> This Article argues that the efficacy of place-based tax incentives can be improved by more deliberately targeting places where residents experience geographic inequality. Using Geospatial Information System (GIS) mapping

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<sup>16</sup> Sitaraman, Ricks & Serkin, *supra* note 1, at 43–44.

<sup>17</sup> *Id.* at 37.

<sup>18</sup> The phrase “place-based” has alternatively been used to describe all spatially-differentiated tax laws. See Daniel Hemel, *A Place for Place in Federal Tax Law*, 45 OHIO N.U. L. REV. \_\_, at 2 (forthcoming 2019). Under this broader definition, any tax law may be described as place-based if its “application depends upon the geographic sites at which persons reside, properties are located, or activities occur.” *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Sitaraman, Ricks & Serkin, *supra* note 1, at 44.

<sup>22</sup> Nestor M. Davidson, *Reconciling People and Place in Housing and Community Development Policy Essay*, 16 GEO. J. ON POVERTY L. & POL’Y 1, 1 (2009).

<sup>25</sup> Laysen, *supra* note 4, at 16–17.

methods, this Article demonstrates how lawmakers can use public data to map spatial disadvantage.

It then draws on tax theory to show how place-based tax incentives can be designed to reduce geographic inequality. The result is not a one-size-fits-all prescription, but a locally tailored approach that can help tax incentives become an effective vehicle for reducing geographic inequality that other policy interventions fail to address. Throughout the analysis, this Article will focus primarily on geographic inequality at the intra-urban level. It is likely that tax incentives can also be used to reduce geographic inequality in rural and suburban settings, or in the context of urban-rural or urban-suburban divides. However, at the intra-urban level analyzed in this Article, neighborhood differences are particularly salient and have significant implications for economic and racial equality. Though I would expect many, if not most, of the findings set forth in this Article to be applicable to geographic inequality in rural and suburban places, further research would be necessary to evaluate the ideal place-based tax incentive design in those contexts.

Accordingly, this Article presents a two-step approach to design place-based tax incentives to address intra-urban geographic inequality. The first step is to identify places that suffer from geographic inequality. I draw on geography, sociology, and communication theories to identify conditions that create geographic inequality. I then use a Geospatial Information System (GIS) mapping tool called ArcGIS to demonstrate how lawmakers can use public data to determine where people are likely to experience geographic inequality. Using Chicago, Illinois as an example, I explore how the neighborhoods identified using my approach compare to those that have been targeted by the New Markets Tax Credit and Opportunity Zones laws. The maps created for this analysis are included in the appendices of this Article, and interactive versions are available online, as described in Appendix A.

The second step in the design of place-based tax incentives is to subsidize activities that can help reduce geographic inequality in the targeted areas by improving neighborhoods for the benefit of existing communities, while minimizing risk of displacement. For reasons to be explained, most place-based tax incentives should be designed to promote job creation, development, or investment in community assets (as defined in Part II.B.3). This Article identifies specific ways to design place-based tax incentives for these purposes, and it discusses challenges presented by program costs, administrative burdens, and the need to motivate claimants to invest in projects that may produce little or no profit.

As such, this Article contributes to the tax literature by explaining how place-based tax incentives can be designed to reduce geographic inequality. The analysis yields several new insights about place-based tax incentive design. First, the appropriate targets of place-based tax incentives are likely to vary across geographies, presenting a significant challenge to the design of federal incentives, which may be difficult to tailor to local need. Second, current incentives target areas where residents do not experience geographic inequality, and they fail to target areas where they do. Third, since the types of geographic inequality vary within and among geographies, there is no one-size-fits all design for effective place-based tax incentives.

This Article begins by explaining why place-based approaches are necessary to supplement people-based policies. Accordingly, Part I argues that people-based policies are ineffective to remedy harm presented by geographic inequality, and tax incentives are a politically viable place-based policy tool. Next, Part II explains how to design place-based tax incentives that target geographic inequality. That Part argues that place-based tax incentives should target areas that experience geographic inequality attributable to spatial mismatch, disinvestment, or weak community infrastructure. The tax incentives should be designed to promote activities that reduce the specific inequities experienced in targeted neighborhoods by promoting job creation, development, or investment in community assets. By explaining how to design ideal place-based tax incentives, the Article establishes a baseline against which current and proposed place-based tax incentives can be evaluated. Having established that baseline, Part III critiques two current place-based tax incentives, the New Markets Tax Credit and Opportunity Zones. It argues that these laws fail to target places with geographic inequality or to promote investment that would reduce it.

Part IV concludes with a caveat. Although this Article presents a roadmap for designing effective place-based tax incentives that can help reduce geographic inequality, it also reveals significant challenges that suggest lawmakers should proceed with caution. Indeed, the analysis in this Article suggests that, in many cases, place-based tax incentives should not be used at all.



## I. THE NEED FOR EFFECTIVE PLACE-BASED TAX INCENTIVES

### A. *People-Based Policies Cannot Address Geographic Inequality*

Seventy years ago, in their seminal work about progressive tax systems, Walter Blum and Harry Kalven observed that “the gravest source of inequality of opportunity in our society is not economic but rather what is called cultural inheritance for lack of a better term.”<sup>26</sup> They cited as examples of cultural inheritance “formal education, healthful diet and medical attention,”<sup>27</sup> but one might add to that list any number of social advantages common among the wealthy: powerful political and professional networks; social ties with other wealthy families; legacy status at elite universities; white skin color; and—most significantly here—the opportunity to live in a place that is healthy, safe, and near good schools and jobs.<sup>28</sup> Modern research concludes that people who live in low-poverty neighborhoods enjoy more opportunities than those who do not.<sup>29</sup>

Neighborhoods with a high concentration of individuals living below the poverty line often draw the attention of policymakers. However, geographic inequality in these neighborhoods is not a mere function of headcount. If it was, the correct policy response would be to direct assistance to people, not to places. After all, if the source of problems associated with high-poverty neighborhoods was the concentration of people living below the poverty line, then lifting those people out of poverty would seem to solve the problem.<sup>30</sup>

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<sup>26</sup> Walter J. Blum & Harry Jr. Kalven, *Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417, 504 (1951).

<sup>27</sup> *Id.*

<sup>28</sup> Similarly, Professor Jennifer Bird-Pollan observed that even if the wealth tax successfully prevented all intergenerational transfers of wealth, “parents would still have numerous ways to improve the lives of their children. Education, health care, clothing, vacations, and even introductions to the right social circles are all benefits given to children by their parents, none of which would be affected by a confiscatory wealth transfer tax.” Jennifer Bird-Pollan, *Unseating Privilege: Rawls, Equality of Opportunity, and Wealth Transfer Taxation*, 59 WAYNE L. REV. 713, 731 (2013).

<sup>29</sup> PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* 28 (2013).

<sup>30</sup> In theory, gentrification of high-poverty areas would also achieve the purpose of deconcentrating poverty. *See generally* J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOWARD L.J. 405 (2003) (providing a defense of gentrification as a solution to urban poverty). However, the benefits of gentrification can only be enjoyed by low-income residents who avoid displacement, which often results from the gentrification process. Tom

But the solution to geographic inequality is not so simple. The poverty rate of a neighborhood is “a mere proxy that conveys ‘multiple dimensions of distress and negative effects,’”<sup>31</sup> and, “[n]eighborhood poverty tends to permeate all aspects of such places.”<sup>32</sup> Such neighborhoods are “fundamentally interwoven with racial segregation, with the resources available for children and families in the community, with the quality of local institutions like schools, with the degree of political influence held by community leaders and residents, with the availability of economic opportunities, and with the prevalence of violence.”<sup>33</sup>

Neighborhood poverty is linked to the built environment, such as the quality of housing or the presence of abandoned or decaying structures, as well as the local business ecosystem and local institutions.<sup>34</sup> These spatial features may harm residents, contributing to “a range of negative outcomes related to physical and mental health, crime, education and employment” that go beyond those caused by poverty alone.<sup>35</sup> Direct assistance (such as cash or vouchers) and tax preferences provided to individual residents of high-poverty neighborhoods have the potential to improve outcomes for individuals,<sup>36</sup> but such the sole reliance on people-based strategies like these would be insufficient to address the problems presented by geographic inequality for at least two reasons.

First, geographic inequality refers to differences among places, not individuals, and its harms are not limited to residents’ low income levels. Geographic inequality is a function of the environment itself. For reasons to

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Slater, *The Eviction of Critical Perspectives from Gentrification Research*, 30 Int’l J. of Urban & Regional Res. 737, 740 (2006). In addition, displaced people may move to other low-income areas, similar to those they exited. SHARKEY, *supra* note 29, at 18 (describing low contextual mobility among low-income black families since the Civil Rights era). As a result, it is possible that such policies could help create new concentrations of poverty.

<sup>31</sup> Laysner, *Pro-Gentrification Origins*, *supra* note 4, at 754 (quoting Andrew Jordan Greenlee, A Relational Analysis of Mobility Within Illinois’ Housing Choice Voucher Program 27 (2012) (unpublished Ph.D. thesis, University of Illinois at Chicago)).

<sup>32</sup> *Id.*

<sup>33</sup> SHARKEY, *supra* note 29, at 28.

<sup>34</sup> *Id.*; Rolf Pendall, Brett Theodos & Kaitlin Hildner, *Why High-Poverty Neighborhoods Persist: The Role of Precarious Housing*, 52 URB. AFF. REV. 33, 34 (2016) (linking the prevalence of precarious housing to neighborhood poverty).

<sup>35</sup> Laysner, *Pro-Gentrification Origins*, *supra* note 4, at 755.

<sup>36</sup> Davidson, *supra* note 33, at 4.

be explained, persistent unemployment, high crime rates, and poor health outcomes—all of which affect the wellbeing of residents, regardless of their poverty status—may arise as a consequence of spatial determinants. As explained below, the geographic proximity of neighborhoods to public transportation or employers, the quality of residential housing or prevalence of abandoned properties, and the presence of physical gathering places and community institutions are all spatial factors that affect residents.<sup>37</sup> Directing monetary assistance to residents may increase their income, but unless the recipients use that income to relocate, they will continue to experience geographic inequality (e.g., continued exposure to increased health risks, violence, unequal job opportunities). Taxpayers, for their part, will bear some of the costs of continuing geographic inequality, such as medical, policing, and public welfare costs.

The second reason that people-based policies must be supplemented by place-based policies is empirical. In theory, directing assistance to residents of low-income communities *would* enable them to move to a neighborhood with less disadvantage. In fact, tenant vouchers, which provide rental assistance to low-income people in order to help them secure housing, have been the dominant policy tool for addressing affordable housing needs since they were introduced by the Nixon Administration in 1974.<sup>38</sup> However, research on such programs suggests that voucher holders face significant barriers to accessing higher quality neighborhoods independent from their financial limitations. In other words, even when residents are given cash assistance, many are unable to move; therefore, it is necessary to improve their neighborhoods to reduce geographic inequality for those who remain.

For example, statutory rental limits and “[l]andlord resistance in desirable neighborhoods” make it difficult for tenants to obtain housing in higher-opportunity neighborhoods.<sup>39</sup> In addition, “[r]acial discrimination may be an added barrier to achieving a reasonable metropolitan distribution of vouchers.”<sup>40</sup> As a result, many voucher holders seek housing in projects financed with the low-income housing tax credit (LIHTC), where landlords are required to accept vouchers; however, LIHTC properties are

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<sup>37</sup> See *infra* Part IIII.

<sup>38</sup> Housing and Community Development Act of 1974., Pub. L. No. 93-383, 88 Stat. 633 (codified in 42 USCS § 1437f); Norman Krumholz, *From The Reluctant Hand: Privatization of Public Housing in the U.S. (2004)*, at 47, in J. ROSIE TIGHE & ELIZABETH J. MUELLER, *THE AFFORDABLE HOUSING READER* (2013).

<sup>39</sup> See Krumholz, *supra* note 38 at 48.

<sup>40</sup> *Id.*

often located in low-income, racially segregated neighborhoods and therefore fail to expand tenants' neighborhood options.<sup>41</sup>

Moreover, even if it were possible to eradicate poverty itself, persistent racial and economic residential segregation patterns would cause geographic inequality to persist, particularly in the case of racial minorities. People lifted out of poverty through direct assistance would remain relatively poor—and many would remain “stuck” in low-income neighborhoods.<sup>42</sup> Sociologist Patrick Sharkey has described the low mobility rates of black families, in particular, out of low-opportunity neighborhoods.<sup>43</sup> Sharkey explains:

The most common experience for black families since the 1970s, by a wide margin, has been to live in the poorest American neighborhoods over consecutive generations. Only 7 percent of white families have experienced similar poverty in their neighborhood environments for consecutive generations. By contrast, persistent neighborhood advantage is virtually nonexistent for black families.<sup>44</sup>

Moreover, several scholars have observed that black families of *all* income levels are more likely to live in or near neighborhoods experiencing poverty than their white counterparts.<sup>45</sup> As Professor Dorothy Brown has explained, “[s]imilarly situated white homeowners live in more affluent communities and suffer less crime than their black counterparts.”<sup>46</sup> Brown suggests that this and other outcomes can be attributed to a discriminatory housing market that renders “blacks with high levels of income and education . . . unable to convert these attributes into a home in a desirable neighborhood.”<sup>47</sup> Professor Sherryl Cashin has similarly noted that “[r]ace appears to play a more dominant role than class in determining where one lives.”<sup>48</sup> Cashin points to “persistent discrimination in housing markets,

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<sup>41</sup> Michelle D. Laysner, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915–974 (2018).

<sup>42</sup> See generally SHARKEY, *supra* note 29 (documenting the contextual immobility of African American families since the Civil Rights era, particularly with respect to low-income families).

<sup>43</sup> *Id.* at 27.

<sup>44</sup> *Id.* at 40.

<sup>45</sup> Sherryl Cashin, *Place, Not Race: Affirmative Action and the Geography of Educational Opportunity*, 47 U. MICH. J.L. REFORM 935, at 939–40 (2013).

<sup>46</sup> Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329, at 360 (2009).

<sup>47</sup> *Id.* at 359.

<sup>48</sup> Cashin, *supra* note 45, at 939.

weak antidiscrimination enforcement, and exclusionary zoning” as explanatory factors.<sup>49</sup> In many cases, these racially segregated neighborhoods are also areas with low opportunity, as evidenced by “high poverty, limited employment, underperforming schools, distressed housing, and violent crime.”<sup>50</sup>

These realities suggest that people-based strategies, including tenant vouchers, are necessary but insufficient to address geographic inequality.<sup>51</sup> Where people-based strategies focus on delivering financial assistance directly to low-income individuals, sometimes with the goal of increasing their residential mobility,<sup>52</sup> place-based strategies assume that many people will remain low-income and will continue to live in disadvantaged neighborhoods. For this reason, place-based strategies focus on improving neighborhood conditions.<sup>53</sup> Together, people-based and place-based policies can be combined for a complete policy response to geographic inequality. The next Section argues that place-based tax incentives are an important part of governments’ toolset for advancing place-based policies, and it is essential that they be designed to maximize their effectiveness.

### ***B. Tax Incentives are a Politically Viable Place-Based Policy Tool***

Place-based tax incentives can advance place-based policies, such as investment in affordable housing and community development. Tax incentives like these, which subsidize non-tax policy goals, are traditionally referred to as “tax expenditures.”<sup>54</sup> Though tax expenditure approaches are often disfavored,<sup>55</sup> the approach has long had political appeal because

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<sup>49</sup> *Id.* at 940.

<sup>50</sup> *Id.*

<sup>51</sup> In addition to the practical reasons to embrace place-based policies like place-based tax incentives, place-based policies may also be justified within welfarist or non-welfarist frameworks. This Article takes no position on these normative debates.

<sup>52</sup> Davidson, *supra* note 33, at 1.

<sup>53</sup> SHARKEY, *supra* note 29, at 137–138.

<sup>54</sup> Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 706 (1969) (defining tax expenditures as “special provisions of the federal income tax system which represent government expenditures made through that system to achieve various social and economic objectives”).

<sup>55</sup> Linda Sugin, *Tax Expenditures, Reform, and Distributive Justice*, 3 COLUM. J. TAX L. 1, 6 (2011) (“A consensus seems to be developing that tax expenditures are the stumbling block preventing sensible taxation and are responsible for uncontrollable government spending.”).

Congress will “vote dollars through tax incentives that it refuses to appropriate through expenditure programs.”<sup>56</sup>

Anti-poverty tax expenditures have political advantages over direct expenditures.<sup>57</sup> In the context of people-based policies, the shift from direct welfare spending to tax-based alternatives has been well-documented in the legal literature.<sup>58</sup> Consider, for example, the Earned Income Tax Credit (EITC).<sup>59</sup> Because an important objective of the EITC is to deliver financial assistance to low-income taxpayers, the EITC can be understood as a people-based anti-poverty program.<sup>60</sup> The Clinton Administration expanded the EITC in 1993 during a period when direct welfare assistance was being scaled back.<sup>61</sup> Today, the EITC is the only remaining non-temporary federal welfare program.<sup>62</sup> While direct welfare assistance was deeply unpopular, the shift to tax expenditures made “welfare policy more palatable to the public, to political leaders and to beneficiaries.”<sup>63</sup>

Place-based tax incentives, which are the place-based counterpart to the EITC and other people-based anti-poverty tax expenditures, have enjoyed the same political advantages over direct spending alternatives. For example, the Low-Income Housing Tax Credit (LIHTC) was introduced in the Tax Credit Reform Act of 1986,<sup>64</sup> during a period when direct spending on new public housing construction was curtailed.<sup>65</sup> Today, the LIHTC is the only federal subsidy for new construction of affordable housing.<sup>66</sup> The Joint Committee on Taxation has estimated that the LIHTC program will cost the federal government \$9.4 billion in 2020.<sup>67</sup>

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<sup>56</sup> Surrey, *supra* note 54, at 732.

<sup>57</sup> Susannah Camic Tahk, *Converging Welfare States: Symposium Keynote*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. 465, 468 (2019) [hereinafter Tahk, *Converging*].

<sup>58</sup> Susanna Camic Tahk, *Tax War on Poverty, The*, 56 ARIZ. L. REV. 791, 793 (2014) [hereinafter Tahk, *Tax War*]; see generally Anne L. Alstott, *Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform, The*, 108 HARV. L. REV. 533 (1994) (analyzing the implications of expanding the earned income tax credit).

<sup>59</sup> I.R.C. § 32.

<sup>60</sup> MICHELLE LYON DRUMBL, *TAX CREDITS FOR THE WORKING POOR: A CALL FOR REFORM* (2019); Alstott, *supra* note 58, at 534.

<sup>61</sup> Alstott, *supra* note 58, at 534.

<sup>62</sup> DRUMBL, *supra* note 60.

<sup>63</sup> Tahk, *Converging*, *supra* note 57, at 468.

<sup>64</sup> Pub. L. No. 99-514 § 252, 100 Stat. 2086 (1986) (codified at I.R.C. § 42).

<sup>65</sup> Laysen, *Pro-Gentrification Origins*, *supra* note 4, at 772.

<sup>66</sup> *Id.*

<sup>67</sup> JOINT COMM. TAXATION, JCX-55-19, ESTIMATES OF FEDERAL TAX

Meanwhile, federal subsidies for community development have been shifting toward tax-based programs. The size of the federal Community Development Fund, which includes the Community Development Block Grant program, has declined by \$1.34 billion in the years from 2005 to 2019,<sup>68</sup> while the cost of major tax expenditures on place-based tax incentives increased by \$3.2 billion during the same period, due in large part to the addition of Opportunity Zones in 2018.<sup>69</sup> As a result, the cost of tax expenditures for community development was estimated to exceed the size of Community Development Fund appropriations for the first time in 2019.<sup>70</sup> These trends are displayed in Figure 1.<sup>71</sup>

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EXPENDITURES FOR FISCAL YEARS 2019–2023, Table 1 (2019), *available at* <https://www.jct.gov/publications.html?func=startdown&id=5238> [hereinafter JCT ESTIMATES 2019–2023].

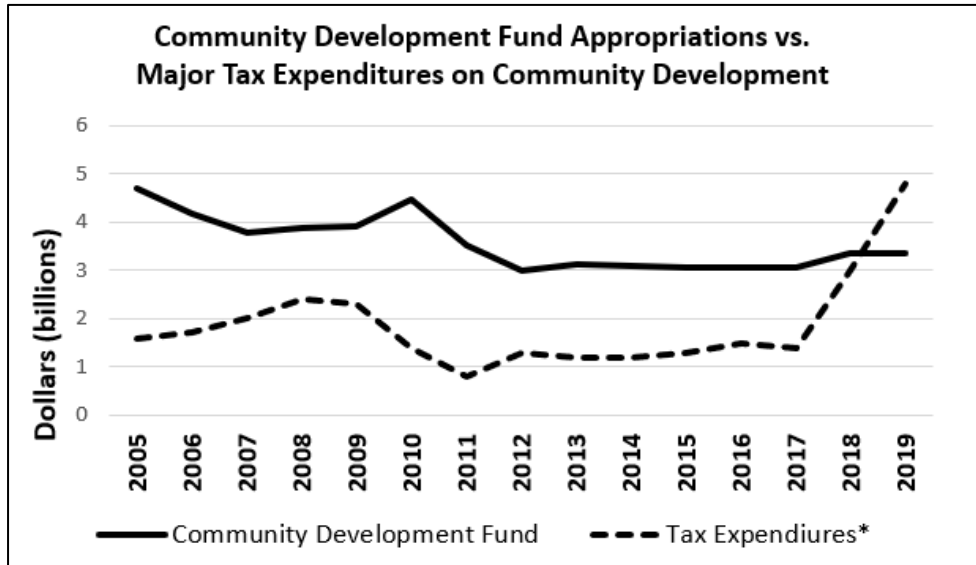
<sup>68</sup> Eugene Boyde, CONG. RESEARCH SERV., R43394, COMMUNITY DEVELOPMENT BLOCK GRANTS: RECENT FUNDING HISTORY 5 (2014), *available at* <https://www.hsdl.org/?view&did=750383> (reporting that the FY 2005 CDBG Formula Grant appropriation was 4.702 billion); MAGGY MCCARTY, CONG. RESEARCH SERV., R45294, HUD FY2019 APPROPRIATIONS: IN BRIEF 6 (2019), *available at* <https://fas.org/sgp/crs/misc/R45294.pdf> (reporting that the FY2019 CDBG Formula Grant appropriation was \$3.365 billion).

<sup>69</sup> JOINT COMM. TAXATION, JCX-55-19, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2005–2009, 34 (2009), *available at* <https://www.jct.gov/publications.html?func=startdown&id=1200> [hereinafter JCT ESTIMATES 2005–2009] (estimating the following \$1.6 billion of tax expenditures in 2005: \$0.4 billion for New Markets Tax Credit; \$0.7 for Empowerment Zone Tax Credit; \$0.5 for Renewal Community Tax Incentive); JOINT COMM. TAXATION, JCX-55-19, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2019–2023, Table 1 (2019), *available at* <https://www.jct.gov/publications.html?func=startdown&id=5238> [hereinafter JCT ESTIMATES 2019–2023] (estimating the following \$4.8 billion of tax expenditures in 2019: \$1.3 billion for New Markets Tax Credit; \$3.5 billion for Qualified Opportunity Zones).

<sup>70</sup> *See infra* Appen. B for a summary of source data.

<sup>71</sup> *Id.* The full source data, including references, is available at the following link: [https://libguides.law.illinois.edu/ld.php?content\\_id=51703455](https://libguides.law.illinois.edu/ld.php?content_id=51703455).

FIGURE 1



\* Tax expenditures include: New Markets Tax Credit (I.R.C. § 45D); Empowerment Zones (I.R.C. § 1396); Renewal Communities (I.R.C. § 1400E (repealed)); Qualified Opportunity Zones (I.R.C. § 1400Z-2)

At this point, two important caveats are in order. First, the political success of place-based tax incentives may not be a compelling reason to continue their use if the tax expenditure approach is inherently flawed. While some experts may take the position that place-based tax incentives should *never* be preferred over direct grants,<sup>72</sup> not all tax scholars take a hard-lined stance against the use of tax expenditures.<sup>73</sup> Moreover, some of the most common critiques of tax expenditures, including “waste, inefficiency, and inequity . . . are true of most tax incentives existing or proposed *because of the way they are structured or grew up.*”<sup>74</sup> In other words, these

<sup>72</sup> Boris I. Bittker, *A Comprehensive Tax Base As a Goal of Income Tax Reform*, 80 HARV. L. REV. 925, 925 (1966).

<sup>73</sup> Linda Sugin, *Tax Expenditures, Reform, and Distributive Justice*, 3 COLUM. J. TAX L. 1, at 16 (2011); David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955, 957 (2003). See also ALICE ABREU & RICHARD GREENSTEIN, *Tax: Different, Not Exceptional*, 17 Admin. L. Rev. \_\_\_, at 14 (forthcoming 2019), available at <https://papers.ssrn.com/abstract=3396103> (arguing that the tax expenditure construct is not helpful because tax law, like non-tax law, is necessarily concerned with multiple and heterogeneous social values”).

<sup>74</sup> Surrey, *supra* note 54, at 726.



problems are not inherent to the tax expenditure approach, but are a product of poor tax expenditure design.

Second, the political success of current place-based tax incentives is at least partially attributable to tax incentive designs aimed at creating “business opportunities for place entrepreneurs that propose projects based on profit potential.”<sup>75</sup> As I have discussed elsewhere, current place-based tax incentives have developed in response to a political economy that prioritizes the interests of market participants over community residents.<sup>76</sup>

This Article argues that tax incentives should be reformed to benefit low-income residents of targeted communities—and those reforms may erode some of the bipartisan support they currently enjoy. However, the public-private partnerships embraced by the place-based tax incentives recommended in this Article would inevitably continue to confer some benefit to private industry. As a result, industry lobbies may continue to defend place-based tax incentives.

Thus, place-based tax incentives have an important role to play in the context of affordable housing and community development policies. This Part has argued that place-based policies can do something that people-based policies cannot: they can address the problem of geographic inequality. And within the world of possible place-based policy tools, tax incentives may be the most politically promising—provided that they are well-designed. The next Part will analyze when, where, and how place-based tax incentives should target geographic inequality.

## **II. HOW TO TARGET GEOGRAPHIC INEQUALITY USING TAX INCENTIVES**

### ***A. Identify Places That Suffer from Geographic Inequality***

This Part argues that to be effective, place-based tax incentives should conform to the following three principles: (1) they should only be used when there is reason to believe that geographic inequality exists in a place;<sup>77</sup> (2) they should be designed to target specific areas that suffer from geographic inequality, not merely “low-income” areas;<sup>78</sup> and (3) they should

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<sup>75</sup> Laysner, *Pro-Gentrification Origins*, *supra* note 4, at 805.

<sup>76</sup> *Id.*

<sup>77</sup> Mark D. Partridge & Dan S. Rickman, *Place-based policy and rural poverty: insights from the urban spatial mismatch literature*, 1 CAMBRIDGE J REGIONS ECON SOC 131, 133 (2008).

<sup>78</sup> *Id.*

subsidize activities that produce benefits expected to remedy actual geographic inequalities experienced in targeted places.<sup>79</sup> Accordingly, a threshold question when designing place-based tax incentives is to identify areas that may experience geographic inequality. To help answer this question, this Part identifies three sources of geographic inequality—spatial mismatch, systematic disinvestment, and weak community infrastructure—and explains how policymakers can target places that create these types of geographic inequality in order to reduce these inequities at their source. In doing so, this Part establishes a baseline set of principles against which current and proposed laws can be evaluated.

### ***1. Spatial Mismatch as a Source of Geographic Inequality***

The first type of geographic inequality that may be reduced through place-based tax incentives is spatial mismatch. The spatial mismatch hypothesis posits that persistent unemployment in low-income areas is caused by a mismatch between immobile residents' skill levels and the types of job opportunities available where they live.<sup>80</sup> The original theory, which was introduced in 1968 by economics professor John F. Kain, provided a geographic explanation to explain persistent unemployment in inner-city black communities.<sup>81</sup> Kain identified three spatial factors that he believed contributed to unemployment in such communities. First, housing market segregation constrained the housing choices of black families to inner-cities.<sup>82</sup> Second, employment opportunities for low-skill and low-wage jobs had migrated to the suburbs.<sup>83</sup> Third, black people living in the inner-city did “not have affordable or efficient transportation to travel to suburban jobs.”<sup>84</sup> As a result, the physical distance between these inner-city communities and suburban employment opportunities helped to maintain unemployment and poverty in these communities. Thus, the spatial mismatch hypothesis provides a purely geographic explanation of poverty and unemployment based on distance between jobs and residents.

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<sup>79</sup> David M. Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275 (2014).

<sup>80</sup> Fredrik Andersson et al., *Job Displacement and the Duration of Joblessness: The Role of Spatial Mismatch*, 100 REV. ECON. STAT. 203, 203 (2018).

<sup>81</sup> *Id.*

<sup>82</sup> Lingqian Hu, *Job Accessibility of the Poor in Los Angeles*, 81 J. AM. PLAN. ASS'N 30, 31 (2015) [hereinafter Hu, *Job Accessibility*].

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

Kain's theory, which was reinforced by a similar analysis by sociology professor William J. Wilson,<sup>85</sup> spurred decades of empirical testing that continues today. Subsequent researchers have attempted to test not only Kain's original hypothesis, but also whether the theory can be extended to other racial minorities and low-income populations more generally.<sup>86</sup> Researchers have tested the hypothesis across cities, and they have tested it across areas with different degrees of poverty concentration within cities.<sup>87</sup> Recently, researchers have revisited the hypothesis in light of modern trends in which low-income populations have begun to move to the suburbs, while higher-income populations return to cities<sup>88</sup>—the reverse of migration patterns observed by Kain.

Empirical findings have been mixed, at best, with some researchers failing to find evidence that spatial mismatch exists in poor communities.<sup>89</sup> For example, a study of job accessibility in Los Angeles between 1990 and 2011 concluded that “[t]he poor in Los Angeles do not face spatial mismatch; that is, the inner-city poor have greater job accessibility than most of the suburban poor.”<sup>90</sup> On the other hand, a study of rural geographies concluded that spatial mismatch does play a role in rural unemployment, suggesting that “place-based policies used to complement people-based policies may help alleviate poverty in more remote locations.”<sup>91</sup>

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<sup>85</sup> In 1987, Wilson argued that the retreat of businesses from poor neighborhoods “isolate[d] many inner-city residents from accessible, middle-class occupations.” Douglas S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, 96 AM. J. SOC. 329, 330 (1990).

<sup>86</sup> Hu, *Job Accessibility*, *supra* note 82, at 31; Janeria Easley, *Spatial Mismatch Beyond Black and White: Levels and Determinants of Job Access Among Asian and Hispanic Subpopulations*, 55 URB. STUD. 1800, 1801–02 (2018).

<sup>87</sup> Lingqian Hu & Genevieve Giuliano, *Poverty Concentration, Job Access, and Employment Outcomes*, 39 J. URB. AFF. 1, 1–2 (2017).

<sup>88</sup> Lingqian Hu, *Changing Job Access of the Poor: Effects of Spatial and Socioeconomic Transformations in Chicago, 1990–2010*, 51 URB. STUD. 675, 677 (2014).

<sup>89</sup> Hu & Giuliano, *supra* note 87, at 1; Hu, *Job Accessibility*, *supra* note 82, at 39–40.

<sup>90</sup> Hu, *Job Accessibility*, *supra* note 82, at 31.

<sup>91</sup> Partridge & Rickman, *supra* note 77, at 138. Other studies suggest the spatial mismatch analysis itself may require more attention to nuance. For example, the hypothesis may explain joblessness of some ethnic groups more than others, stating that it “is probable that some of the groups that experience high exposure to spatial mismatch are not as vulnerable to the negative implications.” Easley, *supra* note 86, at 1817. Similarly, spatial mismatch may help explain employment outcomes, but

Despite the mixed empirical support, the spatial mismatch hypothesis is often cited—either directly or implicitly—as a justification for economic development incentives, including place-based investment tax incentives. As one researcher explained, the spatial mismatch theory “is important because it suggests that reducing the spatial barriers between jobs and housing can significantly affect the economic prospects of disadvantaged groups,” and numerous place-based policies have attempted to do just that.<sup>92</sup> These policies include “economic development programs designed to bring jobs to the inner cities where low-income workers live,” such as enterprise zones, the New Markets Tax Credit (NMTC), and Opportunity Zones.<sup>93</sup> Moreover, a recent Urban Institute analysis of possible spatial mismatch in U.S. cities demonstrates the continued importance of spatial mismatch theory in policy debates.<sup>94</sup>

This Article argues that place-based tax incentives should not be designed to remedy spatial mismatch unless strong evidence exists to support their use in a particular instance. Given the uncertainty surrounding spatial mismatch theory in urban locations, this may mean that place-based tax incentives should rarely be used to promote job creation in cities. Nevertheless, since spatial mismatch may play a role in rural unemployment—and because it is so frequently cited as a justification for place-based tax incentives—it is essential to understand when an area may suffer from this geographic inequality.

A significant challenge to designing tax incentives to remedy spatial mismatch is the task of identifying areas that are experiencing it. Researchers have used a variety of approaches to identify spatial mismatch, but since the 1990s most have “used direct measures of the proximity of jobs to high unemployment areas and the geographic accessibility of those jobs.”<sup>95</sup> Modern GIS mapping capabilities make it possible to perform spatial analyses, assuming high-quality data is available. Ideally,

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other factors complicate the analysis, such as the daytime locations of residents. Naomi F. Sugie & Michael C. Lens, *Daytime Locations in Spatial Mismatch: Job Accessibility and Employment at Reentry from Prison*, 54 *DEMOGRAPHY* 775, 796 (2017).

<sup>92</sup> Hu, *Job Accessibility*, *supra* note 82, at 31.

<sup>93</sup> *Id.*

<sup>94</sup> Christina Stacy, Brady Meixell & Serena Lei, *Too Far from Jobs: Spatial Mismatch and Hourly Workers*, URBAN INST. (2019), <https://www.urban.org/features/too-far-jobs-spatial-mismatch-and-hourly-workers>.

<sup>95</sup> Donald S. Houston, *Methods to Test the Spatial Mismatch Hypothesis*, 81 *ECONOMIC GEOGRAPHY* 407, 412 (2005).

policymakers would use spatial analytics to identify areas where local unemployment may be explained in terms of low proximity to jobs. In practice, data access and interpretive questions present challenges.

The recent Urban Institute study, mentioned above, analyzed spatial mismatch in sixteen cities using data obtained from Snag, an online job-search platform.<sup>96</sup> The researchers performed a zip-code level analysis of the number of job openings listed on Snag versus the number of job seekers who had registered on the website from those zip codes.<sup>97</sup> By focusing on job seekers—at least some of whom were unemployed—and actual job openings, the researchers were able to compare supply and demand across zip codes to identify areas with possible spatial mismatch.<sup>98</sup> Zip codes that featured far more job seekers than job openings were flagged as possible sites of spatial mismatch.<sup>99</sup> The findings varied dramatically across cities, with 62% of Miami zip codes revealing signs of spatial mismatch, as compared to no zip codes at all in Boston.<sup>100</sup>

The Urban Institute study highlights the need for local analyses to determine whether to use place-based tax incentives to address spatial mismatch. However, the study's methods have limited import to real-world policymaking. First, the Snag data was private and obtained via a confidentiality agreement.<sup>101</sup> Since most researchers and policymakers have limited access to this type of data, replicating these methods may not be tenable for policymakers hoping to identify spatial mismatch. Second, the Snag data was estimated to represent just “13 percent of all new hires in 2017,” making it difficult to assess whether the results were generalizable.<sup>102</sup>

A more complete, publicly available dataset for analyzing spatial mismatch is provided by the Center for Economic Studies, a division of the U.S. Census Bureau, through its Longitudinal Employer-Household

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<sup>96</sup> Stacy, Meixell & Lei, *supra* note 94.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See email from Dr. Christina Stacy, Senior Research Associate, Urban Inst., to Michelle D. Layser, Assistant Professor, Univ. Illinois College of Law (Nov. 20, 2019, 07:15 CST) (on file with author).

<sup>102</sup> Stacy, Meixell & Lei, *supra* note 94.

Dynamics (LEHD) program.<sup>103</sup> The Center for Economic Studies combines the administrative records provided by state governments with census data to determine the locations of employers and their employees' places of residence, thereby creating a geocoded dataset about employment, earnings and job flows. This dataset is referred to as LEHD Origin-Destination Employment Statistics (LODES).<sup>104</sup> LODES data is available to policymakers and the public for download or viewing with a free mapping tool called OnTheMap.<sup>105</sup>

Appendix C includes a map of areas that may experience spatial mismatch in Chicago. To create the map, I began by using ArcGIS to generate a heat map of low-wage jobs based on 2015 LODES data.<sup>106</sup> The

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<sup>103</sup> Longitudinal Employer-Household Dynamics: Main, U.S. CENSUS BUREAU, <https://lehd.ces.census.gov/> (last visited Jan. 3, 2020). The LEHD program “combines federal, state and Census Bureau data on employers and employees under the Local Employment Dynamics (LED) Partnership” with participating states. Forty-nine states participate in the LED partnership by providing the Census Bureau with Unemployment Insurance earnings data and Quarterly Census of Employment and Wages. *Id.*

<sup>104</sup> Longitudinal Employer-Household Dynamics: Data, U.S. CENSUS BUREAU, <https://lehd.ces.census.gov/data/> (last visited Jan. 3, 2020).

<sup>105</sup> OnTheMap, U.S. CENSUS BUREAU CTR. ECON. STUDIES, <https://onthemap.ces.census.gov/> (last visited Jan. 3, 2020).

<sup>106</sup> My analysis focused on low-wage jobs because they are more likely than higher paying jobs to represent low-skill positions—and, therefore, are most likely to be available to unemployed workers living in high-poverty areas. RUBEE SINGH & SHRUTI SINGH, *Issues & Challenges of Poverty and Unemployment in World Aspect*, 7 INT’L J. INNOVATIVE ENGINEERING & MGMT. RESEARCH 1039, 1044 (2018) (observing that structural unemployment is often present when workers “lack the skills needed for the jobs” that are available). The data for this analysis was obtained by exporting a shapefile from OnTheMap generated through an “Area Profile Analysis in 2015 by Primary Jobs,” which displayed worker’s place of employment (“Work Area”) for jobs paying \$1,250 per month or less. (This low wage rate was just above the poverty line for 2015.) The data was exported from OnTheMap as a point shapefile with metadata describing the number of jobs in each census block. I used ArcMap spatial analytic tools to assign a 2010 census tract number to each point. *See* OnTheMap, *supra* note 105. I then exported the data to Excel to create a pivot table analysis summarizing the number of jobs per Chicago census tract. I joined that summary data to the 2010 census tract shapefile in order to generate a heat map using natural breaks based on the Jenks Natural Breaks algorithm. Each class in the heat map was “based on natural groupings inherent in the data” in order to identify classes “that best group similar values and that maximize the differences between classes.” Data Classification Methods,

heat map revealed two significant clusters of low-wage jobs. The largest cluster of jobs, which included 36% of all low-wage jobs in the city, was located in the Chicago Loop and surrounding neighborhoods where the “L” rail line converges. The second, but smaller, cluster of jobs was located in Northwest Chicago by O’Hare Airport. These areas constitute hot spots of jobs in Chicago.

In addition, I identified census tracts that have both high poverty rates (40% or higher) and high unemployment rates (30% or higher), based on 2015 American Community Survey data.<sup>107</sup> Forty percent was used as the poverty-rate cut-off because experts have identified that level of neighborhood poverty as correlated with low opportunity.<sup>108</sup> Notably, the map shows that none of the census tracts with both high-poverty and high-unemployment are in job hot spots. In fact, all but one of those census tracts were among the lowest tranche for job locations. Thus, it would be reasonable to conclude that these areas have low job access, and that the distance between jobs and unemployed workers’ places of residence could suggest spatial mismatch within the city boundaries.<sup>109</sup>

However, in most cases, that conclusion is incorrect. Thirty-two of the 38 tracts were located within 1 mile of the rail line, suggesting that many of these workers have access to transportation—the lack of which is a key

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ESRI, <https://pro.arcgis.com/en/pro-app/help/mapping/layer-properties/data-classification-methods.htm> (last visited Jan. 3, 2020). Note that researchers have employed sophisticated models using LODES data to detect areas with spatial mismatch, and this map is not intended as a definitive statement about what areas experience spatial mismatch in Chicago. See Reza Sardari, *Job Growth and the Spatial Mismatch between Jobs and Low-Income Residents*, Council for Cmty & Econ. Research 29 (LED Webinar, Apr. 17, 2019), <https://www.c2er.org/events/webinars.asp>; Davis Chacon-Hurtado et al., *Analysis of Spatial Mismatch and Equity using Commuting and Labor Sheds: Trends in Indiana*, Transp. Res. Record DOI:0361198119849919, 6 (2019). Rather, my intent is to illustrate how relevant factors can be incorporated in the design process, and to demonstrate how doing so may lead to different areas being targeted than is typical under current law.

<sup>107</sup> Data on file with author.

<sup>108</sup> Andrew Jordan Greenlee, *A Relational Analysis of Mobility Within Illinois’ Housing Choice Voucher Program 27* (2012) (unpublished Ph.D. dissertation, Univ. Illinois – Chicago), *available at* <https://indigo.uic.edu/bitstream/handle/10027/9108/GreenleeAndrew.pdf?sequence=1> (citing PAUL A. JARGOWSKY, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* (Russell Sage Foundation 1998)).

<sup>109</sup> In the case of federal and state incentives, it may be necessary to look beyond the city boundaries to the location of suburban jobs.

element of spatial mismatch. The six tracts that are not within a mile of the rail line, and therefore may experience spatial mismatch, are symbolized on the map with cross hatches. Those six tracts are the ones where residents are most likely to experience spatial mismatch under this analysis.

To design a place-based tax incentive to address spatial mismatch, the law should target the tiny subset of census tracts where spatial mismatch may contribute to local unemployment and poverty. In cities like Chicago, the qualifying areas may be few. Directing job tax incentives to areas that are not experiencing spatial mismatch may create unjustified locational distortions of business activity. For example, businesses may eliminate jobs outside of tax favored zones in order to create unnecessary “new” jobs in the zones.<sup>110</sup> In other cases, businesses’ productivity may decline when they locate in tax favored zones. In the absence of spatial mismatch, these inefficiencies are unjustified because there is no offsetting distributional benefit:<sup>111</sup> residents in the zones already have access to jobs—in a spatial sense—even if they have been unable to secure them. As a result, creating jobs closer to their places of residence will not address the underlying causes of their unemployment. In those cases, people-based policies may be a more appropriate policy response than place-based initiatives.

## ***2. Systematic Disinvestment as a Source of Geographic Inequality***

The second type of geographic inequality that may be reduced through place-based tax incentives is disinvestment, which refers to the systematic abandonment of property. The mixed evidence supporting the spatial mismatch hypothesis has led researchers to look for alternate explanations for persistent unemployment and poverty in certain neighborhoods. As one researcher explained, the empirical findings “suggest that residential segregation impacts job access through other mechanisms. . . . One such mechanism is disinvestment, whereby financial institutions and businesses fail to serve areas with large minority and foreign born populations.”<sup>112</sup>

Disinvestment theories provide a structural explanation for neighborhood distress that is linked to geography, not the characteristics of residents: certain geographic areas have been systematically harmed

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<sup>110</sup> Ellen P. Aprill, *Caution: Enterprise Zones Los Angeles, April 29, 1992 and Beyond: The Law, Issues, and Perspectives*, 66 S. CAL. L. REV. 1341, 1348 (1992).

<sup>111</sup> Note that some efficiency loss may be acceptable if the tax expenditure has desirable distributive consequences. Sugin, *supra* note 73, at 7.

<sup>112</sup> Easley, *supra* note 86, at 1803.



through legal policies that concentrated poverty, restricted credit, and led to disinvestment in the built environment.<sup>113</sup> The harmful effects of this disinvestment persist, and people exposed to the built environment in these places face unique disadvantages, especially with respect to health risk. For example, poor quality housing is associated with a variety of health concerns, such as exposures to nitrogen dioxide, environmental tobacco smoke, lead poisoning, asthma triggers (such as mold, moisture, dust mites, and rodents), mental health stressors (such as violence and social isolation), and injuries among children and the elderly.<sup>114</sup>

Conversely, researchers have linked the development of previously abandoned property with decreased crime rates.<sup>115</sup> For example, Professor Charles C. Branas researched the impact of improving abandoned lots by removing trash and debris, adding fencing, grading the land, planting new grass, and planting small trees.<sup>116</sup> Branas not only found that residents perceived that crime and vandalism had declined due to the interventions, but he also observed that actual crime such as gun violence, burglary, and nuisances significantly declined.<sup>117</sup>

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<sup>113</sup> Massey, *supra* note 85, at 336.

<sup>114</sup> Virginia A. Ruah et al., *Housing and Health: Intersection of Poverty and Environmental Exposures*, 1136 ANNALS OF THE N.Y. ACAD. OF SCI. 276, 278–83 (2008); Matt Turner, *Dwelling Disparities: How Poor Housing Leads to Poor Health*, 113 ENVTL. HEALTH PERSP. A310, A312 (2005); James Krieger, *Housing and Health: Time Again for Public Health Action*, 92 AM. J. PUB. HEALTH 758, 758 (2002); Hilary Thompson et al., *Health Effects of Housing Improvement: Systematic Review of Intervention Studies*, 323 BMJ 187, 189 (2001).

<sup>115</sup> Charles C. Branas et al., *Citywide Cluster Randomized Trial to Restore Blighted Vacant Land and its Effects on Violence, Crime, and Fear*, 115 PROC. NAT'L ACAD. SCI. USA 2946, 2946 (2018); Michelle Kondo, *Effects of Greening and Community Reuse of Vacant Lots on Crime*, 53 URB. STUD. 3279, 3291–92 (2016); Eugenia C. Garvin, *Greening Vacant Lots to Reduce Violent Crime: A Randomised Controlled Trial*, 19 INJ. PREV. 198, 198 (2013) (“[G]reening was associated with reductions in certain gun crimes and improvements in residents’ perceptions of safety.”); Samantha Teixeira & John M. Wallace, *Data-Driven Organizing: A Community–University Partnership to Address Vacant and Abandoned Property*, 21 J. COMMUNITY PRAC. 248, 250 (2013). *See also* Misun Hur & Jack L. Nasar, *Physical Upkeep, Perceived Upkeep, Fear of Crime and Neighborhood Satisfaction*, 38 J. ENVTL. PSYCHOL. 186, 191 (2014) (describes the positive correlation between perceived neighborhood upkeep and perceived safety from crime and neighborhood satisfaction).

<sup>116</sup> Branas, *supra* note 115, at 2946.

<sup>117</sup> *Id.* at 2946.

The mechanisms by which segregation practices have led to disinvestment—the abandonment of property— by landlords and other property owners are twofold. First, disinvestment can be linked to racial segregation itself.<sup>118</sup> Douglass Massey has shown that racial segregation has the effect of concentrating poverty in racially segregated neighborhoods.<sup>119</sup> Through a series of thought experiments, Massey demonstrated that “through the imposition of racial segregation, the average poverty rate experienced by blacks moves up while that experienced by whites goes down.”<sup>120</sup> This downward economic trajectory leads to disinvestment as the average income level in segregated neighborhoods falls, because “even homeowners and landowners with money to maintain their properties have less incentive to do so because of the spreading deterioration around them.”<sup>121</sup> Moreover, local businesses and medical facilities shut down in response to residents’ declining income, thereby contributing to neighborhood decline.<sup>122</sup>

Second, historical redlining practices further compounded the effects of residential segregation, ultimately leading to more disinvestment that continues into the present.<sup>123</sup> Redlining was a historic practice in which banks “refused to give mortgages to African Americans or extract[ed]

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<sup>118</sup> The U.S. has a long history of legally sanctioned racial segregation policies that persisted into the 1980s. RICHARD ROTHSTEIN, *THE COLOR OF LAW*, 47–48 (2017) (describing racial zoning practices that continued to guide policies in Kansas City and Norfolk until at least 1987). For example, in the mid-1970s “most cities, Chicago and Philadelphia being extreme examples, continued to situate public housing in predominantly low-income African American neighborhoods.” *Id.* at 34. In 1976, the Supreme Court held that the Chicago Housing Authority “had unconstitutionally selected sites to maintain the city’s segregated landscape.” *Id.* at 34–35. But the following year, in 1977, the Supreme Court “upheld a zoning ordinance in Arlington Heights, a suburb of Chicago, that prohibited multiunit development anywhere but adjacent to an outlying commercial area. The ordinance ensured that few, if any, African Americans could reside in residential areas” of the suburb. *Id.* at 53–54.

<sup>119</sup> See generally Massey, *supra* note 85 (arguing that segregation concentrates poverty).

<sup>120</sup> *Id.* at 336.

<sup>121</sup> *Id.* at 346. Sociologist Douglass Massey rejected the idea “that institutional restructuring, in and of itself, was responsible for concentrating urban poverty.” *Id.*, at 330. Instead, he argued that racial segregation itself was the root cause of concentrated poverty, subsequent declines in neighborhood income levels, and, ultimately, disinvestment in those areas. *Id.*

<sup>122</sup> *Id.* at 347, 350.

<sup>123</sup> See *infra* notes 164–168 and accompanying text.

unusually severe terms from them with subprime loans.”<sup>124</sup> The phrase redlining refers to maps created in 1940 by the federal Home Owner’s Loan Corporation (HOLC), which was created during the Great Depression to refinance mortgages that were at risk of foreclosure.<sup>125</sup>

To administer the loan program, the HOLC “created color-coded maps of every metropolitan area in the nation” to rate neighborhoods based on their credit risk.<sup>126</sup> On the maps, “the safest neighborhoods [were] colored green and the riskiest colored red,” and a “neighborhood earned a red color if African Americans lived in it, even if it was a solid middle-class neighborhood of single-family homes.”<sup>127</sup> Very few mortgages were extended for the purchase of homes in these “redlined” areas. Figure 1 in Appendix D shows a reproduction of the 1940 HOLC redlining map for Chicago created using ArcGIS.<sup>128</sup>

During the period when these maps were used, redlining practices had “meaningful negative effect[s] on homeownership, house values, rents, and vacancy rates.”<sup>129</sup> Reduced access to credit and higher borrowing costs “reduce the value of homes, which in turn raise the likelihood that property owners with mortgages could be left owing more than the market value of their property.”<sup>130</sup> As home values drop below their replacement cost, owners stop maintaining them.<sup>131</sup> Thus, like residential segregation itself, redlining practices may have destined some neighborhoods to disinvestment and decay. Moreover, the long-term effects of disinvestment have continued into the present.

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<sup>124</sup> ROTHSTEIN, *supra* note 118, at vii.

<sup>125</sup> *Id.* at 63–64.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Shapefiles for this map were obtained from the University of Richmond’s Mapping Inequality project. See Robert K. Nelson et al., *Mapping Inequality*, <https://dsl.richmond.edu/panorama/redlining/> (last visited Jan. 3, 2020). Shapefiles are available for download at <https://dsl.richmond.edu/panorama/redlining/#loc=10/41.944/-87.813&city=chicago-il&text=downloads>.

<sup>129</sup> Daniel Aaronson, Daniel Hartley & Bhashkar Mazumder, *The Effects of the 1930s HOLC “Redlining” Maps* 3 (Fed. Reserve Bank of Chicago, Working Paper No. 2017-12, Revised 2019), *available at* <https://www.chicagofed.org/publications/working-papers/2017/wp2017-12>.

<sup>130</sup> *Id.* at 29.

<sup>131</sup> *Id.*

Researchers have linked these 1930s and 1940s redlining practices to modern segregation patterns.<sup>132</sup> Though subsequent policy interventions have mitigated some of the effects of redlining, researchers with the Federal Reserve Bank of Chicago found that “racial segregation along both the C-B and D-C borders remain[ed] in 2010, almost three quarters of a century later.”<sup>133</sup> Another study of the long-term effects of mortgage redlining found that depressed housing prices could still be observed in formerly redlined areas as late as the 1990s.<sup>134</sup> Other scholars have traced the neighborhood patterns in modern-day Flint, Michigan to the racist housing practices of the past.<sup>135</sup> Redlining of homeowners’ insurance policies—an analogous practice by the insurance industry—has also been linked to uneven development and neighborhood decline.<sup>136</sup>

Thus, there is strong empirical support for policies that reverse the continuing effects of past disinvestment through rehabilitation of the built environment, investment in quality housing, and putting to use abandoned property. Of course, a major challenge for designing tax incentives that benefit low-income communities by developing the built environment is to avoid triggering gentrification or otherwise harming low-income residents. This issue will be deferred until Part II.B, because the first step in targeting geographic inequality through development activities is to determine which neighborhoods are experiencing disinvestment.

Tax incentives that target areas with a history of discrimination can be justified as subsidies to reverse the processes that created disinvestment in those neighborhoods: where credit was once restricted by lending policies, it will now be expanded by tax policies.<sup>137</sup> However, this case is strongest when the areas that show signs of disinvestment are the same as those that experienced formal discrimination in the past. As explained above, research has linked some neighborhood distress to former redlining policies.<sup>138</sup> Possible evidence of this link can be seen in Chicago by looking at the

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<sup>132</sup> *Id.* at 35. See also Ian Appel & Jordan Nickerson, *Pockets of Poverty: The Long-Term Effects of Redlining* 2–3 (unpublished manuscript, Oct. 2016), available at <https://papers.ssrn.com/abstract=2852856>.

<sup>133</sup> Aaronson, Hartley & Mazumder, *supra* note 129, at 35.

<sup>134</sup> Appel & Nickerson, *supra* note 132, at 3.

<sup>135</sup> Richard Casey Sadler & Don J. Lafreniere, *Racist Housing Practices as a Precursor to Uneven Neighborhood Change in a Post-Industrial City*, 32 HOUS. STUD. 186, 203 (2017).

<sup>136</sup> Gregory D. Squires, William Velez & Karl E. Taeuber, *Insurance Redlining, Agency Location, and the Process of Urban Disinvestment*, 26 URB. AFF. Q. 567, 583 (1991).

<sup>137</sup> Hemel, *supra* note 20, at 5.

<sup>138</sup> See *supra* notes 129–136 and accompanying text.

location patterns of vacant and abandoned properties, as abandonment is the final stage of disinvestment.<sup>139</sup>

Figure 2 in Appendix D shows the locations of vacant and abandoned properties in Chicago relative to the 1940 HLOC redlining map described above. To create this map, I identified vacant or abandoned properties for which service requests were submitted to the City of Chicago between January 1, 2017 and March 21, 2018,<sup>140</sup> and I plotted their locations over the HLOC redlining map.<sup>141</sup> Notice that the locations of vacant properties often overlap with areas that were once identified as red (“hazardous”) or yellow (“declining”) zones on the 1940 HLOC redlining map. Forty percent of all service requests were for vacant or abandoned properties located in census tracts that were formerly redlined as Grade D – “Hazardous” on the HLOC risk map.<sup>142</sup> Another 45% of properties were located in areas formerly “yellow-lined” as Grade C – “Definitely Declining.”<sup>143</sup>

These results suggest that, in Chicago, previous designation as redlined or yellow-lined areas is predictive of the rate of vacancies. Furthermore, because the number of formerly yellow-lined tracts (277) is more than double the number of formerly redlined tracts (134), the similar rate of vacancies in those tracts (1,900 versus 1,710, respectively) indicates that the average number of vacancies in formerly redlined tracts is much higher. This could lend some support to the perspective that tax incentives should target formerly redlined tracts before targeting other areas.

However, this may be overstating the case. First, the HLOC map had identified very few tracts as “best” or “still desirable” to begin with; since most of the city was subject to yellow-lining or redlining, it is

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<sup>139</sup> Neil Smith, *Toward a Theory of Gentrification A Back to the City Movement by Capital, Not People*, 45 J. AM. PLANNING ASSOC. 538, 545 (1979).

<sup>140</sup> Vacant Building Service Requests, City of Chicago, [https://www.chicago.gov/city/en/depts/bldgs/dataset/vacant\\_and\\_abandoned\\_buildingsservicerequests.html](https://www.chicago.gov/city/en/depts/bldgs/dataset/vacant_and_abandoned_buildingsservicerequests.html) (last visited Jan. 3, 2020)

<sup>141</sup> Under the Opportunity Zones law, state governors had until March 21, 2018 to designate qualified Opportunity Zones. *See* Press Release, U.S. Dep’t Treasury, Treasury, IRS Announce First Round of Opportunity Zones Designations for 18 States (Apr. 9, 2018), *available at* <https://home.treasury.gov/news/press-releases/sm0341>. To help facilitate analysis of the zone locations, I selected this date range to include the full 2017 calendar year, plus the period of 2018 prior to designation, in order to show vacancies during the period preceding designation.

<sup>142</sup> This included 1,710 of 4,240 properties. Data on file with author.

<sup>143</sup> This included 1,900 of 4,240 properties. Data on file with author.

unsurprising that many of today's vacant or abandoned properties would be located in those areas. To further analyze existing patterns relative to the historical redlining map, I performed a geospatial analysis of the density of vacant and abandoned properties throughout the city. Figure 3 in Appendix D displays the results. To create this map, I used the optimized hot spot analysis tool on ArcGIS to generate a map that shows areas with a higher than expected (hot spot) or lower than expected (cold spot) concentration of vacant properties.<sup>144</sup>

The results identify parts of South Chicago as having higher than expected rates of vacant and abandoned properties. Approximately 35% of these “hot spot” tracts were formerly redlined tracts, and none were formerly identified by the HLOC as “best” or “still desirable.” However, 25% of the tracts in Northeast Chicago that had a *lower* than expected rate of vacancies (cold spots) were *also* formerly redlined tracts.<sup>145</sup> This highlights the risk of relying too heavily on the formal redlining history to predict current need.

Moreover, it should be noted that *any* high-poverty neighborhood is at risk of experiencing disinvestment—regardless of its history—as “urban decline is inextricably linked to concentrated poverty.”<sup>146</sup> The process of disinvestment begins when homeowners or tenants can no longer afford to maintain their properties.<sup>147</sup> While some of today's distressed neighborhoods may have been harmed by formal segregation policies of the past, residential mobility and other intervening events and policies have undoubtedly complicated the picture.

Meanwhile, incentives that target declining neighborhoods more broadly may still be justified as extensions of the disinvestment theories. First, recent scholarship has shown that African American families, in particular, have had remarkably little contextual residential mobility since the civil rights era; while families have not necessarily remained in the *same* neighborhoods, most have continued to live in neighborhoods with the same level of disadvantage.<sup>148</sup> These findings strongly suggest that the legacy of discrimination against African American families has continued to affect

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<sup>144</sup> The analysis shows areas where the distribution of properties is likely non-random (to 99% of confidence).

<sup>145</sup> Data on file with author.

<sup>146</sup> Laysner, *Pro-Gentrification Origins*, *supra* note 4, at 773.

<sup>147</sup> Smith, *supra* note 139, at 545.

<sup>148</sup> SHARKEY, *supra* note 29, at 18, 40.

present residential patterns, and today's *de facto* segregation may continue to increase the rate of disinvestment in those neighborhoods.<sup>149</sup>

The best approach, then, is to target areas that show actual, current evidence of decay, abandonment, or the underproduction of quality housing. Within these areas, the law should target areas that are at high risk of continued disinvestment due to concentrated poverty. Data collected in connection with vacant or abandoned property service requests can be joined with demographic data to help identify areas that may suffer from geographic inequality attributable to disinvestment. Using this method, I created Figure 4 in Appendix D to identify areas that may experience disinvestment in Chicago.

To create this map, I identified tracts within “hot spot” areas that had a very high (40% or higher) poverty rate.<sup>150</sup> The map shows 39 tracts (out of 170 hot spot tracts) that may be good candidates for targeting with place-based tax incentives that promote rehabilitation or improvement of vacant or abandoned property. Residents in these tracts are exposed to a high rate of vacant or abandoned properties, which may increase neighborhood crime rates and health risks.<sup>151</sup> Their neighborhoods are also at risk of further disinvestment due to concentrated poverty.

To design a place-based tax incentive to address disinvestment, the law should target the subset of census tracts where very low-income communities are experiencing a high rate of disinvestment. While in some cases this approach may help address the legacy of discrimination against redlined neighborhoods, the primary geographic inequity to be addressed by these incentives is disinvestment itself: harms caused by persistent exposure to a built environment that has been neglected or abandoned. After all, in many cases the same structural forces that lead to the discriminatory policies of the past continue to drive today's neighborhood patterns.

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<sup>149</sup> Brett Theodos, Eric Hangen, Brady Meixell, Prasanna Rajasekaran, *Neighborhood Disparities in Investment Flows in Chicago*, URBAN INST., (May 22, 2019), <https://www.urban.org/research/publication/neighborhood-disparities-investment-flows-chicago>.

<sup>150</sup> See *supra* note 108 and accompanying text.

<sup>151</sup> See C.E. Ross & J. Mirowsky, *Neighborhood Disadvantage, Disorder, and Health*, 42 J. HEALTH & SOC. BEHAV. 258, 272 (2001).

### ***3. Weak Community Infrastructure as a Source of Geographic Inequality***

A third type of geographic inequality that may be reduced through place-based tax incentives is weak community infrastructure. Community infrastructure can be defined as physical gathering spaces and inter-personal or inter-organizational communication networks.<sup>152</sup> As this section will explain, strengthening community infrastructure can help improve health outcomes, reduce crime, and increase the general health and resilience of communities even when poverty and unemployment levels persist.<sup>153</sup> Empirically, low-income residents of neighborhoods with strong community infrastructure experience better health outcomes<sup>154</sup> and more resilience to natural disasters (e.g., hurricanes and heat waves)<sup>155</sup> than low-income residents of neighborhoods with weak community infrastructure. In other words, the absence of physical places and local institutions that support community infrastructure constitutes geographic inequality.

The concept of community infrastructure derives from two distinct lines of theory. The first is social infrastructure theory, which has been developed by sociologists who argue that interpersonal interaction can improve community health and resilience.<sup>156</sup> These researchers have traditionally focused on the connectedness of community members—and communication networks—as determinants of community resilience,

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<sup>152</sup> See, e.g., KLINENBERG, *supra* note 210; George Villanueva, et al., *Bringing Local Voices Into Community Revitalization: Engaged Communication Research in Urban Planning*, 45 J. APPLIED COMM. RES. 474, 477–78 (2017) [hereinafter Villanueva, *Local Voices*]

<sup>153</sup> *Id.*

<sup>154</sup> See generally Holley A. Wilkin, *Exploring the Potential of Communication Infrastructure Theory for Informing Efforts to Reduce Health Disparities: CIT and Health Disparities*, 63 J. COMM. 181 (2013) (explaining how insights from community infrastructure theory can be used to improve approaches to community health).

<sup>155</sup> Matthew L. Spialek & J. Brian Houston, *The Influence of Citizen Disaster Communication on Perceptions of Neighborhood Belonging and Community Resilience*, 47 J. APPLIED COMM. RES. 1, 16 (2019) (“our results suggest the development of community disaster narratives may begin organically through individual storytelling at the micro-level, in that we found the more individuals told stories about the disaster, the more they perceived their community to be resilient” to natural disasters); Kathleen A. Cagney et al., *Social Resources and Community Resilience in the Wake of Superstorm Sandy*, 11 PLOS ONE e0160824 (2016); Bryan Semaan & Jeff Hemsley, *Maintaining and Creating Social Infrastructures: Towards a Theory of Resilience* 9 (2015).

<sup>156</sup> See, e.g., KLINENBERG, *supra* note 210.



particularly in the face of natural disasters.<sup>157</sup> However, recent literature on social infrastructure has begun to emphasize the importance of physical gathering spaces.<sup>158</sup> For example, sociology professor Eric Klinenberg defines social infrastructure as “the physical places and organizations that shape the way people interact.”<sup>159</sup> Klinenberg points to public institutions like libraries and schools, as well as private and commercial spaces like community gardens, walkable sidewalks, community centers, and daycare centers as places that promote recurring social interaction and durable relationships.<sup>160</sup> Though the phrase “social infrastructure” has not often been used, a significant body of empirical literature concludes that spatial environments affect human behavior, interpersonal interactions, and overall health.<sup>161</sup>

The second is communication infrastructure theory (CIT), which has been developed by communication theorists. In the most basic sense, CIT predicts that strengthening inter-personal and inter-organizational communication networks can improve community health.<sup>162</sup> Specifically,

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<sup>157</sup> Cagney, *supra* note 155, at 12–13; Bryan Semaan & Jeff Hemsley, *Maintaining and Creating Social Infrastructures: Towards a Theory of Resilience* 9 (2015) (unpublished conference paper), available at <http://www.researchgate.net/publication/274735283>.

<sup>158</sup> Mario L. Small & Laura Adler, *The Role of Space in the Formation of Social Ties*, 45 ANNUAL REV. OF SOC. 111, 112 (2019); KLINENBERG, *supra* note 210; *See generally* Nadha Hassen & Pamela Kaufman, *Examining the Role of Urban Street Design in Enhancing Community Engagement: A Literature Review*, 41 HEALTH & PLACE 119 (2016) (presenting a literature review describing how street design affects community engagement).

<sup>159</sup> KLINENBERG, *supra* note 210.

<sup>160</sup> *Id.*

<sup>161</sup> *See, e.g.*, Small & Adler, *supra* note 158, at 112; Hassen & Kaufman, *supra* note 158, at 120 (noting that “the physical design of many neighbourhoods has increasingly been seen as detrimental to social interactions, civic participation or community engagement” and “reduced community engagement is linked to poorer health, including chronic non-communicable disease and mental health issues”); Caitlin Eicher & Ichiro Kawachi, *Social Capital and Community Design*, in MAKING HEALTHY PLACES: DESIGNING AND BUILDING FOR HEALTH, WELL-BEING, AND SUSTAINABILITY 117, 120–24 (And Srew L. Dannenberg, Howard Frumkin, & Richard J. Jackson eds., 2011) (linking social capital to health and explaining how the built environment affects social capital); Jan C. Semenza & Tanya L. March, *An Urban Community-Based Intervention to Advance Social Interactions*, 41 ENV'T & BEHAV. 22, 24–26 (2009) (arguing that the “lack of public gathering places can stifle spontaneous socializing and thus adversely affect the density of interpersonal networks,” leading to lower social capital and poor health outcomes).

<sup>162</sup> Villanueva et al., *Local Voices*, *supra* note 152, at 477–78.

the theory posits that “communication resources available in local communities enable citizens to engage in collective action for the common good.”<sup>163</sup> CIT describes two levels of communication resources. The first is the local “storytelling network,” which reflects “everyday conversations and neighborhood stories that people, media, and grassroots organizations create and disseminate.”<sup>164</sup> The second level, which is most relevant here, is the “communication environment that consists of physical and social conditions of a neighborhood that can facilitate or inhibit the storytelling network.”<sup>165</sup>

This communication environment—called the communication action context—has two elements.<sup>166</sup> The first are “communication hot spots,” which are “places where community members tend to engage each other in everyday conversation.”<sup>167</sup> Practically speaking, anything that would constitute social infrastructure under Klinenberg’s definition would also constitute a communication hot spot. The second are “comfort zones,” which include “businesses and community institutions with which residents have an ongoing affective connection, derived through interactions that develop a sense of familiarity over time.”<sup>168</sup>

Though social infrastructure theory and CIT are distinct, they both theorize that the spatial environment—which is comprised of both the built environment and local institutions—influences social ties in ways that either improve or harm community members. For this reason, this Article refers to these theories collectively as “community infrastructure theories.” These community infrastructure theories provide an important, but often overlooked, justification for place-based policies since they highlight the

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<sup>163</sup> Seungahn Nah et al., *A Communicative Approach to Community Development: The Effect of Neighborhood Storytelling Network on Civic Participation*, 47 COMMUNITY DEV. 11, 12 (2016).

<sup>164</sup> Yong-Chan Kim & Sandra J. Ball-Rokeach, *Community Storytelling Network, Neighborhood Context, and Civic Engagement: A Multilevel Approach*, 32 HUM. COMMUN. RES. 411, 413 (2006).

<sup>165</sup> Villanueva et al., *Local Voices*, *supra* note 152, at 477.

<sup>166</sup> George Villanueva et al., *Communication Asset Mapping: An Ecological Field Application Toward Building Healthy Communities*, 10 INT’LJ. COMM. 2704, 2708 (2016) [hereinafter Villanueva et al., *Asset Mapping*]. The community action context encompasses “the tangible and intangible resources of residential areas that promote communications between residents (e.g., residential stability, ethnic heterogeneity, institutional resources, neighborhood milieu, collective memories, etc.)” Kim & Ball-Rokeach, *supra* note 164, at 413.

<sup>167</sup> Villanueva, *Asset Mapping*, *supra* note 166, at 2709.

<sup>168</sup> *Id.*

importance of place itself as a determinant of unequal outcomes. They also reveal important insights about the relationship between subsidized projects and community health that can guide lawmakers in the design of place-based tax incentives. Specifically, it is possible that tax incentives could be used to subsidize new gathering spaces that facilitate interpersonal interaction, or to subsidize institutions that strengthen inter-organizational communication networks for the benefit of low-income residents.<sup>169</sup> Before tax incentives can be designed to strengthen community infrastructure, however, lawmakers must identify areas that have weak community infrastructure. This is not an easy task.

To identify areas with weak community infrastructure, lawmakers must first create a map that shows the locations of places and institutions that facilitate positive social interaction among low-income residents. If lawmakers possessed complete knowledge about how different types of places and institutions function to sustain community infrastructure, then they could easily map their locations and identify neighborhoods that may suffer from weak community infrastructure. But they do not possess such knowledge. Instead, they must look to two information sources to identify areas that are appropriate targets of place-based tax incentives: general empirical findings and actual community members.

Empirical data can help identify categories of places or institutions that tend to play important roles in community infrastructure. These types of places are referred to in the literature as “community assets” or “communication assets,” depending on the discipline.<sup>170</sup> Researchers have relied on empirically-informed categories as a starting point for mapping community assets. These categories have included community organizations, schools, medical facilities, churches, and cultural arts resources, as well as places like “cafes, diners, barbershops, and bookstores where people are welcome to congregate and linger regardless of what they’ve purchased.”<sup>171</sup> Such categories are “informed by previous research on places identified along communicative dimensions from communication-hot-spot and comfort-zone questions” and derived from a review of social

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<sup>169</sup> Villanueva et al., *Local Voices*, *supra* note 152, at 477–78.

<sup>170</sup> *See id.*, at 477; Christian Blickem et al., *What is Asset-Based Community Development and How Might It Improve the Health of People With Long-Term Conditions? A Realist Synthesis*, 8 SAGE OPEN 215824401878722 (2018).

<sup>171</sup> Villanueva, *Asset Mapping*, *supra* note 166, at 2708; KLINENBERG, *supra* note 210, at 16.

infrastructure literature.<sup>172</sup> Lawmakers could use similar categories to help design place-based investment tax incentives.

However, relying solely on categories to determine which investments are best promoted through tax incentives would be dangerous. Within these broad categories, different spaces may foster social interaction more successfully than others—and even those that are successful may inadvertently harm low-income residents by excluding them. These limitations can be seen in at least three contexts. First, places that may otherwise facilitate positive social interaction may fail to do so because they are designed to move people through the space efficiently.<sup>173</sup> Schools and daycares are good examples. When schools and daycares provide opportunities for parents to linger at the time of pick-up and drop-off, they can become important sites of gathering and relationship building not only for students, but also for their parents.<sup>174</sup> But the “way they’re planned, designed, and programmed shapes the interactions that develop in and around them.”<sup>175</sup> Modern designs, such as traffic circles, that make pick-up and drop-off more efficient reduce social interaction at these places, making them less valuable to social infrastructure.<sup>176</sup> Moreover, charter schools may affect community infrastructure differently than traditional public schools.

Second, some places may strengthen community infrastructure for higher income populations but fail to do so for more vulnerable groups, particularly when different groups are encouraged to gather. Schools can “set boundaries that define who is part of the community and who is excluded.”<sup>177</sup> Commercial establishments that could otherwise serve as third spaces could implement policies that discourage lingering. Klinenberg observed, “[i]nside almost every Starbucks, Dunkin’ Donuts, or McDonald’s, particularly those in neighborhoods where there are teenagers, poor people, or old people around, there’s usually at least one sign that says No Loitering. And it’s not just a suggestion.”<sup>178</sup> In other cases, low-income people are priced-out of gathering; the real estate may get “so expensive that only the wealthy can afford to live there,” or “[s]hops and restaurants go upscale, attracting a certain clientele.”<sup>179</sup>

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<sup>172</sup> *Id.* at 2711; KLINENBERG, *supra* note 210, at 16.

<sup>173</sup> KLINENBERG, *supra* note 210, at 18.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 40.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> KLINENBERG, *supra* note 210, at 44.

<sup>179</sup> *Id.*

Third, some places may have varying impact on social infrastructure depending on neighborhood demographic or time of day. For example, studies have found that retail outlets may support positive social gathering during the day but function as criminal hot spots at night.<sup>180</sup> Another study found that coffee shops are associated with a decrease in street robberies “in gentrifying neighborhoods that are primarily white or Latino,” presumably due to increased presence of people on the sidewalks.<sup>181</sup> But street robberies “tend to go up in gentrifying neighborhoods that are primarily black,” most likely because such neighborhoods have fewer commercial establishments and, consequently, less informal surveillance.<sup>182</sup>

For these reasons, lawmakers should not rely solely on categories to identify community assets. Although they may use categories as a first step, they should then solicit citizen participation to confirm the actual role of places and institutions in community infrastructure—and to identify community assets that may have been overlooked. For example, one group of researchers worked with community participants to identify “tattoo parlors, bicycle shops, and youth bicycle groups” as part of the communication environment for south Los Angeles youth, as well as other “shops catering to these types of youth interests.”<sup>183</sup> The same researchers also identified a shopping mall as part of the communication environment, noting that “the mall operated as a ‘gathering place where people can buy goods from a variety of small vendors and buy different types of food for sale.’”<sup>184</sup> None of these assets would have been identified using pre-defined categories.

Policymakers can use a variety of methods to solicit community participation to help identify areas with weak community infrastructure, but all require at least some investment of time and resources. One cost and time efficient method may be to survey residents about how they perceive and engage with places in their neighborhoods.<sup>185</sup> Another option is to employ a method called “mental mapping,” which asks residents to describe how they experience their neighborhoods using words, images, and colors.

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<sup>180</sup> *Id.* at 76.

<sup>181</sup> *Id.* at 77.

<sup>182</sup> *Id.*

<sup>183</sup> Villanueva, *Asset Mapping*, *supra* note 166, at 2720.

<sup>184</sup> *Id.* at 2712.

<sup>185</sup> *Id.* at 2711 (using survey methods to establish a baseline of places presumed to be communication assets).

<sup>186</sup> Similarly, a technique called “story mapping” can enable residents to explain their experiences of their neighborhoods through storytelling.<sup>187</sup> As I explained in an earlier work, “though the value of mental mapping and participatory storytelling have long been known to researchers, the modern technique uses digital data and user-friendly mapping platforms to create and curate maps,” and “[t]he goal is to combine modern mapping capabilities with a participatory process in order to understand places and engage residents in community development.”<sup>188</sup>

Nevertheless, soliciting community participation is not without its challenges, and some academic efforts to engage residents in asset mapping efforts have had limited success. For example, the University of Illinois at Chicago partnered with the Chicago Partnership for Health Promotion to create a web-based community asset map that can be edited by residents.<sup>189</sup> The map’s creators explained that the application was designed “for you to use on your smart phone, while outside, walking around your community,” and “you can easily add assets from your own community.”<sup>190</sup> Users are encouraged to identify assets such as the “capacities and abilities of community members,” physical structures or places (e.g., schools, hospitals, or churches), businesses that provide jobs and support the local economy, and citizens associations.<sup>191</sup> This community asset map would be tremendously valuable to policymakers seeking to design place-based tax incentives to strengthen community infrastructure. However, despite having been created in 2018, the map contained few resident-added asset points by late 2019, and it may no longer be maintained by the University. The Chicago Community Asset Map, therefore, illustrates the challenges of relying on citizen participants. On the other hand, Illinois journalists have used mental mapping workshops to learn about issues affecting communities

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<sup>186</sup> Robert E Gutsche, Jr., *News Place-Making: Applying ‘Mental Mapping’ to Explore the Journalistic Interpretive Community*, 13 VISUAL COMM. 487, 488 (2014) (describing the methodology).

<sup>187</sup> Willow S Lung-Amam & Casey Dawkins, *The Power of Participatory Story Mapping: Advancing Equitable Development in Disadvantaged Neighbourhoods* COMMUNITY DEV. J. 3 (2019) (DOI:10.1093/cdj/bsy064). The authors note that scholars “have long recognized the value of stories within planning and community development processes.” *Id.*

<sup>188</sup> Laysner, *Pro-Gentrification Origins*, *supra* note 4, at 809.

<sup>189</sup> Chicago Community Asset Map: Why, How, and What You Can Do To Participate, <https://www.arcgis.com/apps/Cascade/index.html?appid=0e221c6192124bed9a8c11c1ff92ed87> (last visited Jan. 3, 2020).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

throughout the state, suggesting that these challenges are not insurmountable.<sup>192</sup>

That said, an important implication of this analysis is that there is no one-size-fits all way to target places with weak community infrastructure. This presents a significant challenge for the design of federal law. But here, too, the challenge may not be insurmountable. A federal tax incentive statute can be drafted to restrict the incentive to high-poverty areas (e.g., 40% or higher poverty rate), and the determination of whether a place qualifies as having weak community infrastructure may be made on a case-by-case basis by administering agencies. For example, state or local authorities may be required to designate qualifying areas based on a study evaluating community infrastructure. However, state and local governments may object that such a requirement would be too costly and burdensome. Alternatively, developers could be required to demonstrate that their proposed project will strengthen community infrastructure. For example, they could be obligated to submit a community asset map in connection with their application for tax preferences.

Here, it is worth noting that under current law, Community Development Entities that apply for NMTC allocations are evaluated on factors such as whether a proposed grocery would be located in a food desert, or whether a proposed medical facility would be located in a medically underserved area.<sup>193</sup> To make these determinations, the CDFI Fund draws on GIS data provided in the United States Department of Agriculture (USDA) Food Atlas<sup>194</sup> and maps of Medically Underserved Areas maintained by the Health Resources & Services Administration.<sup>195</sup>

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<sup>192</sup> Logan Jaffe, *Understand “Variety.” Listen to Young People. Pay Attention to Changing Community Reputations*, PROPUBLICA (June 15, 2018, 4:00 AM), <https://www.propublica.org/article/propublica-illinois-free-street-theater-workshops-rock-island-toulon>.

<sup>193</sup> CDFI FUND, NEW MARKETS TAX CREDIT FREQUENTLY ASKED QUESTIONS 26 (2019), <https://www.cdfifund.gov/Documents/NMTC%20Compliance%20Monitoring%20FAQ%20-%20Approval%20Copy%203-22-2019.pdf> [hereinafter CDFI FAQs].

<sup>194</sup> U.S. Dept. of Agriculture & Econ. Research Serv., *Go to the Atlas*, <https://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas/> (last visited Jan. 3, 2020).

<sup>195</sup> Health Resources & Servs. Admin., *Quick Maps—Medically Underserved Areas/Populations*, <https://data.hrsa.gov/hdw/Tools/MapToolQuick.aspx?mapName=MUA> (last visited Jan. 3, 2020).

Though no current agency maintains community asset maps, such maps may become available in the future as data availability increases, particularly as state and local governments expand their collections of GIS data. Thus, even if it would be difficult in the current information and political environment to design well-targeted place-based tax incentives to strengthen community infrastructure, the task may be more manageable in the future.

## ***B. Promote Activities that Reduce Geographic Inequality***

### ***1. Designing Incentives to Reduce Specific Geographic Inequalities***

Part II.A. has explained how place-based tax incentives can be designed to target areas experiencing three different kinds of geographic inequality: spatial mismatch, disinvestment, and weak community infrastructure. But identifying the correct spatial target is only half the challenge. Once the targeted areas have been identified, the second step is to design an incentive for claimants to engage in activities that can help reduce the spatial inequities in the targeted neighborhoods.

This Subsection argues that there is no one-size-fits-all prototype for drafting place-based tax incentives. Instead, the appropriate incentive design will vary depending on the desired programmatic benefit—and the benefit should match the geographic inequality (or inequalities) experienced in the targeted places. As will be discussed in greater detail in Part III, current place-based tax incentives often have ambiguous objectives and are drafted to promote a wide variety of investments. By permitting a wide range of eligible investments, most current place-based tax incentives confer significant power to private market participants to select which projects will be funded.<sup>196</sup> This is a mistake.

When statutes fail to precisely define the funded activity, it is difficult to ensure that projects selected by the private markets will align with lawmakers' policy objectives. Place-based tax incentives that promote job creation, development activities, and community infrastructure each implicate different approaches to reduce geographic inequality. Table 1 summarizes the programmatic benefits implicated by various types of geographic inequality. The remainder of this Subsection will identify best practices for designing tax incentives to promote these activities, as well as

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<sup>196</sup> *Id.*



three significant challenges: cost, administrative burdens, and the need to motivate profit-motivated claimants.

**TABLE 1**  
**DESIGNING THE SUBSIDY DIMENSION TO MATCH THE SPATIAL**  
**DIMENSION**

| <b>Spatial Dimension: Target Areas Experiencing . . .</b> | <b>Subsidy Dimension: Promote Activities That Produce . . .</b>                       |
|---|---|
| Spatial Mismatch  | Jobs  |
| Disinvestment   | Development (e.g., affordable housing, rehabilitation)                                |
| Weak Community Infrastructure                             | Community Assets (e.g., gathering places; institutions that facilitate communication) |

*Promoting Job Creation to Reduce Spatial Mismatch.* When place-based tax incentives are used to target places harmed by spatial mismatch, their primary objective should be to create local jobs that can be filled by residents.<sup>197</sup> Empirical studies of existing job creation and hiring incentives have been mixed, with some studies concluding that few net new jobs are created, and others suggesting that new jobs tend to be filled by non-residents.<sup>198</sup> These studies provide reason to be cautious of job creation incentives, but they do not foreclose the possibility that tax incentives with different designs may produce different outcomes. In fact, some empirical evidence suggests that two features of job creation tax incentives—both of which are uncommon under current law—may increase their chances of benefiting low-income residents.

First, the law should be drafted to promote job creation by businesses that rely on low-skill human labor.<sup>199</sup> In particular, the incentive

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<sup>197</sup> See *supra* Part II.A.III.B.1 for a discussion of geographic inequality caused by spatial mismatch between workers' places of residence and employment opportunities.

<sup>198</sup> See *infra* note 252 and the accompanying text.

<sup>199</sup> Kaitlyn Harger & Amanda Ross, *Do Capital Tax Incentives Attract New Businesses?*

should reward the creation of low-skill positions that can be filled by residents experiencing spatial mismatch. Moreover, the tax preference should be earned through hiring additional employees, not through capital investments. Restricting the tax preference in this way would limit the subsidy to investment in workforce expansion.<sup>200</sup>

This approach contrasts to incentives aimed at growing the local tax base, because “focusing on low-wage sectors, like retail, typically will not be fruitful compared to high-skilled, high-paying sectors of the economy like high-tech services and manufacturing.”<sup>201</sup> But the primary goal of place-based tax incentives is not to grow the local tax base; the goal is to benefit low-income communities by reducing spatial mismatch. Thus, where some experts have suggested improving general tax incentives for job creation by “favoring high-skilled industries over retail,” this Article argues that in the specific context of *place-based* tax incentives, the law should do the opposite.

Therefore, when they are used, place-based tax incentives for job creation should favor low-skilled industries like retail, which produce a significant number of jobs that can be filled by low-income workers.<sup>202</sup> But there is also a second, more direct way to design tax incentives that create jobs that can be filled by low-income residents: require the firm to hire low-income residents of the community as a condition of the subsidy. Although this approach is uncommon under existing law, it is not without precedent. For example, some states include employee residency requirements as a

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*Evidence Across Industries from the New Markets Tax Credit*, 56 J. REGIONAL SCI. 733, 751 (2016) (finding that the NMTC causes industry sorting across location, leading to increased investment in capital intensive industries like manufacturing but deters investment in more labor-intensive industries.);

<sup>200</sup> Another option would be to exclude certain types of investment, such as investment in storage warehouses, that are unlikely to be associated with significant hiring. This approach would help address narrow critiques that tax incentives often subsidize lightly staffed warehouses rather than producing manufacturing jobs; however, exclusions like these are likely to be both over and under inclusive.

<sup>201</sup> Edward W. De Barbieri, *Lawmakers as Job Buyers*, FORDHAM L. REV. 15, 34 (2019) [hereinafter *Lawmakers*].

<sup>202</sup> As discussed in Part II.A. above, spatial mismatch often fails to explain poverty and unemployment in urban contexts. For this reason, there may not be a strong case for designing place-based tax incentives for job creation in urban settings. On the other hand, spatial mismatch may be a strong explanation for rural poverty and unemployment. Further research is needed to evaluate which low-skill jobs would be most beneficial in rural settings.

condition of eligibility for claiming hiring tax credits in enterprise zones.<sup>203</sup> In fact, one of the few enterprise zone studies that found an increase in employment among zone residents was conducted in Texas, where the tax preferences were tied to employees' place of residence.<sup>204</sup>

In sum, to promote the creation of jobs that reduce geographic inequality attributable to spatial mismatch, place-based tax incentives should promote low-skill, human labor and tie incentives eligibility to employees' residence. The next section will argue that to promote development to reverse harmful disinvestment, the incentive should promote rehabilitation projects expected to reduce health and crime risks, and it should prioritize projects with high anticipated use-value to low-income residents.

*Promoting Development to Reverse Harmful Disinvestment.* When place-based tax incentives are used to target places that have been harmed by disinvestment, two objectives should dictate their design: they should promote development and rehabilitation of the built environment;<sup>205</sup> and, in doing so, they should prioritize development with high use-value to low-income residents.<sup>206</sup> The primary purpose of this development activity should be to improve unhealthy environmental conditions for the benefit of residents. A secondary goal may be to encourage businesses to return to those communities; however, this is a second-order goal of reinvestment that should not take precedence over other aspects of the tax incentive design.

To promote development and rehabilitation of the built environment, the law should avoid restrictions that limit developers' use of vacant property. As discussed in greater detail in Part III, the Opportunity Zones tax incentive restricts the circumstances under which vacant or abandoned property will qualify as good Opportunity Zone property. A possible downside to such restrictions is that it presents a barrier to rehabilitation that may be socially valuable. For example, redevelopment of

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<sup>203</sup> Conn. Gen. Stat. § 12-217(e); Fla. Stat. tit. XIX § 212.096; Ind. Code § 6-3-3-10; La. Rev. Stat. § 51:1787(A)(2); Mo. Rev. Stat. tit. X § 135.110; Nev. Rev. Stat. tit. 22 § 274.270; N.C. Gen. Stat. § 105-129.83; Ohio. Rev. Code §§ 5709.65; R.I. Gen. L. 1956 § 42-64.3-6; Tenn. Code § 13-28-208; Tex. Gov't C. § 2303.402.

<sup>204</sup> Matthew Freedman, *Targeted Business Incentives and Local Labor Markets*, 48 J. HUM. RESOURCES 311, 340 (2013) [hereinafter, *Targeted Business Incentives*].

<sup>205</sup> See *supra* Part II.A.III.B.2 for a discussion of geographic inequality caused by disinvestment.

<sup>206</sup> Edward De Barbieri, *Opportunism Zones* (2020) (unpublished manuscript on file with author) [hereinafter De Barbieri, *Opportunism*].

undeveloped lots or abandoned property could benefit a community by eliminating crime hot spots or by removing lead paint.

However, the law must include some administrative mechanism to determine which rehabilitation projects should be eligible for the tax incentive. Not all development will produce the kinds of benefits described above; these outcomes are highly case specific and depend on the type and location of the investment. As a result, it is hard to imagine a law that could reliably generate such benefits through its general application. For this reason, place-based tax incentives should not make the tax benefits available without procedures for screening projects. Projects should be approved by an administering agency with expertise in development of low-income communities.

The supervising agency should allocate tax benefits according to the following guidelines. First, the agency should be required to prioritize applicants who can demonstrate that their projects are likely to reduce health risks or crime rates, the two major harms caused by disinvestment.<sup>207</sup> To aid the agency in this determination, applicants should be required to produce a data-supported report that explains how the proposed project will achieve these objectives. For example, the report may be based on the identification and analysis of undeveloped or abandoned property, crime hot-spots, environmental health risks, or severe housing need. This would allow the administrative agency to select projects based on a specific, data-driven analysis of local conditions.

Second, applicants should be required to conduct a study showing the project's expected impact on the neighborhood. At minimum, the study should address possible environmental impacts, assess the displacement risks, and (in the case of housing projects) evaluate the possible impact on residential segregation patterns. To the extent that negative outcomes are anticipated, the applicant should be required to produce a plan for mitigating those harms. To ensure community participation, the plan might

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<sup>207</sup> Branas, *supra* note 115, at 2950–51 (linking rehabilitation to crime reduction); Erica Raleigh & George Galster, *Neighborhood Disinvestment, Abandonment, and Crime Dynamics*, 37 J. URB. AFF. 367–396 (2015) (linking rehabilitation to crime reduction); Virginia A. Rauh, Philip J. Landrigan & Luz Claudio, *Housing and Health: Intersection of Poverty and Environmental Exposures*, 1136 ANNALS NY ACAD. SCI. 276, 276–277 (2008); *See generally* Turner, *supra* note 114 (discussing the health risks associated with exposure to poor housing conditions); H. Thomson, M. Petticrew & D. Morrison, *Health Effects of Housing Improvement: Systematic Review of Intervention Studies*, 323 BMJ 187, 189 (2001).

incorporate a Community Benefits Agreement (“CBA”) signed by the developer and representatives of the local community.<sup>208</sup> Breach of a CBA and other failure to execute the mitigation plans should render the tax credits subject to recapture due to noncompliance.

Third, the agency should prioritize development that will ultimately have high use-value for low-income residents, such as affordable housing or occupancy by a community organization.<sup>209</sup> Failure to restrict the uses of redeveloped property may result in the transformation of these spaces into places to be used by a higher-income demographic, then there is a risk that displacement-causing gentrification could follow.<sup>210</sup> For example, new housing development could attract higher-income outsiders while failing to maintain affordable housing stock, or it could drive up local rents to the detriment of low-income occupants.<sup>211</sup> Moreover, the agency should be mindful that development of “new businesses, such as coffee shops and restaurants, symbolize an ‘invasion’ of white, affluent residents” and may “spark public debates about displacement.”<sup>212</sup>

Despite these risks, there are good reasons to think that development can be used to help increase the supply of housing—especially affordable housing that is underproduced by the market—and to redevelop spaces for

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<sup>208</sup> Edward W. De Barbieri, *Thematic Overview: Race, Place, and Pedagogy in Achieving Access to Justice through Community Economic Development Symposium: Community Economic Development Is Access to Justice*, J. AFFORDABLE HOUS. & CMTY. DEV. L. 467, 469 (2018).

<sup>209</sup> De Barbieri, *Opportunism*, *supra* note 206.

<sup>210</sup> ERIC KLINENBERG, *PALACES FOR THE PEOPLE* (2018).

<sup>211</sup> Some recent research has concluded that condominium development is not positively correlated with gentrification. See Leah Platt Boustan, et al., *Does Condominium Development Lead to Gentrification?* 1, 18 (Nat’l Bureau of Econ. Research, Working Paper No. 26170, 2019), available at <http://www.nber.org/papers/w26170>. However, gentrification studies have long been plagued with challenges like how to define “gentrification” and how to measure displacement, making it difficult to draw strong conclusions from quantitative studies like these). Tom Slater, *The Eviction of Critical Perspectives from Gentrification Research*, 30 INT. J. URB. REG. RES. 737, 744, 748 (2006).

<sup>212</sup> KLINENBERG, *supra* note 210. Klinenberg recounted the case of a coffee shop owner who elicited anger from a low-income black community by hanging a sign that read “Nothing says gentrification like being able to order a cortado” and “Happily gentrifying the neighborhood since 2014.” *Id.* By symbolizing—or actively embracing—the gentrification of a community, a new project may be detrimental to the community even without being a causal factor in the neighborhood change.

use by pro-social firms and organizations. For example, the LIHTC has been successful at promoting investment in affordable housing,<sup>213</sup> and the NMTC has been used to develop community centers, grocery stores, and other spaces that can help serve local residents.<sup>214</sup>

In sum, to promote development to reverse harmful disinvestment, the incentive should promote rehabilitation projects expected to reduce health and crime risks, and it should prioritize projects with high anticipated use-value to low-income residents.

*Promoting Investment in Community Assets.* To reduce geographic inequality caused by weak community infrastructure, place-based tax incentives should promote investment in community assets. One way to do achieve this objective would be to limit the definition of eligible investments to investment in “community assets.”<sup>215</sup> For example, the statute may define community assets with reference to categories of activities, such as “job training services, childcare services, educational services, homeless and social services, medical services, elderly and disabled care services, food services, schools, community centers, food kitchens and grocery stores, cultural centers, and any other activities identified by the Treasury Secretary as promoting community infrastructure.” However, due to the hyper-local nature of community assets, active administration would be necessary.

To this end, the CDFI Fund stands out as an agency that is well equipped to administer place-based tax incentives that promote investment in community assets. In fact, the CDFI Fund already incorporates some site-specific analyses to evaluate applications for NMTC projects. For example, the CDFI Fund considers whether food-service projects are targeted to food deserts or whether medical facility projects are targeted to medically underserved areas.<sup>216</sup> It also gives special weight to projects located in areas designated as “severely distressed.”<sup>217</sup> A similar approach could be adopted

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<sup>213</sup> Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871, 877 (1993).

<sup>214</sup> Statement based on author’s empirical observations. Data on file with author.

<sup>215</sup> Note that, in many instances, one might expect—or even prefer—that community assets are owned by nonprofit organizations rather than for-profit investors. However, as illustrated in Part III.A.3 below, nonprofits may be able to participate in tax incentive deals. The extent to which nonprofits are able to participate depends on the tax incentive design.

<sup>216</sup> See *supra* note 193 and accompanying text.

<sup>217</sup> *Id.* None of these criteria are mandated by statute or IRS regulation, but they

to more deliberately prioritize proposed projects that promise to strengthen community assets.

Thus, to promote investment in community assets, the law should define community infrastructure and require an agency to administer the program to prioritize projects that are likely to become community assets. Because place-based tax incentives have not yet been used to promote investment in community assets, the prescription set forth here is more tentative than the other two designs. Nevertheless, these principles provide a starting point for policymakers and researchers who wish to use place-based tax incentives for this purpose.

## ***2. Challenges to Designing Effective Place-Based Tax Incentives***

*Controlling Program Costs.* In addition to the principles described above, place-based tax incentives should incorporate mechanisms to control program costs. Though cost is a concern for all place-based tax incentives, it may be particularly relevant in the case of incentives for job creation. This is because a common empirical critique of such incentives is that they tend to cost the government far more money in foregone revenue than what is gained in new jobs.<sup>218</sup>

There are several reasons why the costs of job creation tax incentives often exceed the value of new jobs. First, as discussed above, many urban settings do not exhibit evidence of spatial mismatch. In those cases, new jobs are simply unnecessary, and the dollars spent to create them are presumably wasted. It is important to note, however, that spatial mismatch may explain spatial mismatch in some urban settings and many rural geographies. In those places, new jobs promoted through tax incentives may have value.

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may play a key role in determining the types of projects that receive funding and their locations. In future work, I will assess the relative importance of these administrative and procedural safeguards for program outcomes. For the purpose of this Article, these observations about the NMTC application process serve to illustrate that agencies are capable of evaluating local data to select projects most likely to strengthen community infrastructure.

<sup>218</sup> De Barbieri, *Lawmakers*, *supra* note 201, at 18–19; Edward A. Zelinsky, *Tax Incentives for Economic Development: Personal (and Pessimistic) Reflections 2008 Law Review Symposium: Corporations and Their Communities: Panel 2: Community Efforts to Attract and Retain Corporations: Legal and Policy Implications of State and Local Tax Incentives and Eminent Domain*, 58 CASE W. RES. L. REV. 1145, 1152 (2007).

Nevertheless, a second reason why job creation tax incentives may exceed the value of new jobs is that subsidized businesses simply fail to create enough new jobs to justify the tax expenditure. It is not uncommon for businesses to receive significant state and local tax breaks but subsequently fail to create the promised jobs.<sup>219</sup> For this reason, the tax incentives should be conditioned on the creation of a minimum number of jobs, and they should be subject to recapture in the event that the jobs fail to materialize or are scaled back within a specified period.<sup>220</sup>

Third, preexisting businesses may use tax breaks to subsidize new hiring that would have taken place absent the subsidy.<sup>221</sup> Tax incentives that reward new job creation that would have occurred without the subsidy are wasteful, as “[w]e should not pay for what taxpayers would do anyway.”<sup>222</sup> To minimize this risk, tax incentives should not be made available to firms that are already located in the targeted zones unless they engage in substantial expansion that result in a specified number of new jobs. In general, the incentive should be limited to new firms.

Third, and relatedly, place-based tax incentives may encourage businesses to shift new jobs to tax-favored locations while reducing the number of jobs outside of tax-favored zones.<sup>223</sup> In these cases, the net impact of the tax incentives may be neutral or negative, even if new jobs are created in the tax-favored location. To minimize this risk, the law should exclude businesses that have relocated from another part of the region.

In addition to the concerns above, all types of place-based tax incentives present a risk that the value of the incentive will exceed the amount needed to motivate the desired behavior. To minimize this risk, Professor Edward De Barbieri has suggested an auction-based system for administering tax incentives.<sup>224</sup> Under De Barbieri’s proposal, tax incentives would be administered using a competitive bidding process with definable goals.<sup>225</sup> Specifically, the tax incentive would be administered as follows:

A state or local agency could implement a  
reverse auction following the legislature’s and

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<sup>219</sup> De Barbieri, *Lawmakers*, *supra* note 201, at 49.

<sup>220</sup> *Id.* at 49.

<sup>221</sup> Harger & Ross, *supra* note 199, at 750–51.

<sup>222</sup> David M. Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275, 295 (2014).

<sup>223</sup> Aprill, *supra* note 4, at 1348.

<sup>224</sup> De Barbieri, *Lawmakers*, *supra* note 201 at 22.

<sup>225</sup> *Id.* at 25.



executive’s budget allocation. The agency would issue a public notice of available funding. There would be a deadline for companies to inform the agency of plans to use the subsidy and a disclosure of how much subsidy would be needed per job, either created or retained. Upon allocating all of the budget, the agency would award the lowest amount of subsidy per job.<sup>226</sup>

Although De Barbieri’s proposal was developed to control the costs of state-level tax incentives used to lure companies to a state, any place-based tax incentive could incorporate an auction process. For example, a similar auction process may be adapted to aid in cost effective administration of development tax incentives. To do so, the tax incentive should be designed as follows. The law should provide for a statutorily limited amount of tax credits to be allocated among qualified claimants pursuant to a competitive application process.<sup>227</sup> To incorporate a bidding element, the administrative agency should require applicants to state the amount of the subsidy they require. The agency should place significant weight on the per-jobs or per-unit cost. In addition, the law itself should include provisions to allow tax authorities “to claw back funds spent on companies that accept subsidies but still reduce their workforces.”<sup>228</sup>

*Limiting Administrative Burdens.* The reforms proposed thus far present a risk of increasing administrative burdens to the detriment of program objectives. Typically, tax expenditures would “take advantage of the existing infrastructure of tax collection,” and because they usually rely on self-declared eligibility, they are often simpler than other methods of implementing policy.<sup>229</sup> Professors David Weisbach and Jacob Nussim have argued that these gains in administrative efficiency often justify what is lost in substantive accuracy.<sup>230</sup> Yet, in the case of place-based tax incentives, lost accuracy—subsidizing investments that produce few positive externalities—may be both harmful to low-income communities and costly to the government. These results would undermine the objectives of place-based tax incentives.

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<sup>226</sup> *Id.* at 47–48.

<sup>227</sup> Note that this is the approach currently used by both the NMTC and the LIHTC.

<sup>228</sup> *Id.* at 49.

<sup>229</sup> Weisbach & Nussim, *supra* note 73, at 980.

<sup>230</sup> *Id.*

Therefore, to the extent that policymakers intend to employ place-based tax incentives, they must take into account their administrative costs and complexity.<sup>231</sup> These costs may be minimized, but they cannot be eliminated. The active administration and competitive application procedures recommended thus far would impose costs on both taxpayers and the government. First, they may increase taxpayers' compliance obligations. When possible, these costs may be limited by using standardized forms with minimal narrative components. However, as shown above, maximizing programmatic benefits often depends on case-by-case, data-driven analyses of proposals. To aid agencies' in these determinations, this Article has recommended various prerequisite studies and reports to be submitted in connection with taxpayers' applications for tax benefits. If these compliance costs are too high, the tax benefits may no longer motivate investors.

That said, it is worth noting that NMTC applicants and LIHTC applicants already participate in competitive application processes that require detailed proposals. The increased obligations recommended here would increase the administrative burdens of these programs, but many current participants would probably continue to participate if their administrative burdens were to increase. This also suggests that some taxpayers would be willing to participate in similar application processes in the context of other place-based tax incentives.

One reason why the administrative burdens placed on taxpayers would not be an absolute barrier to participation is that most participants in place-based investment programs are sophisticated taxpayers, such as industry participants that specialize in tax credit transactions, with professionals capable of navigating administrative complexities.<sup>232</sup> However, these costs must be acknowledged.

Second, in addition to increasing administrative burdens on taxpayers, the recommendations above may place additional burdens on administrative agencies by requiring interagency collaboration. Ideally, place-based tax incentives would be jointly administered between tax authorities and government agencies with substantive subject matter

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<sup>231</sup> Schizer, *supra* note 222, at 311.

<sup>232</sup> *See, e.g., infra* notes 255–258 and accompanying text (describing the role of Community Development Entities in NMTC transactions); *infra* notes 273–274 and accompanying text (describing the role of Opportunity Funds in Opportunity Zones transactions).

expertise. For example, tax incentives for job creation may be jointly administered with labor departments, and tax incentives for development or community infrastructure may be jointly administered with housing or community development agencies.

Interagency collaboration between the IRS and other agencies has precedent. The LIHTC is jointly administered between the IRS and state and local housing authorities.<sup>233</sup> The NMTC is jointly administered by the IRS and the CDFI Fund, which is a separate office within the Treasury Department.<sup>234</sup> However, interagency collaboration presents its own costs and challenges. Interagency partnerships with the IRS will be most successful when: there is strong leadership by the IRS; the agencies share a common “intellectual capital” around the tax incentive program; there are mechanisms for cross-agency information sharing; the roles of the respective agencies are clear and formalized; and both agencies’ resources can be leveraged.<sup>235</sup>

To enable effective leadership by the IRS, Professor Blaine Saito has proposed the creation of a new office within the IRS called the Director for Collaborative Projects, “which could handle and oversee all interagency collaboration and collaborative governance matters administered through the tax code.”<sup>236</sup> Saito argues that strong leadership is essential to help build cultural capital—defined as “a set of ‘agreed on facts, shared problem definitions, and mutual understandings [that] not only [provide] a common basis for discussion and [move] the players toward agreement on policy issues, but [allow] them to use this shared information to coordinate many of their actions.’”<sup>237</sup>

Building cultural capital requires efforts to develop inter-agency teams, joint training, sharing physical spaces, harmonizing policies and procedures, and building accountability across agencies.<sup>238</sup> Not only would there be significant costs associated with these efforts, but their effectiveness also assumes that the co-agencies can communicate effectively and share information. Since tax privacy laws often limit information sharing, Saito recommends that the IRS “delegate the form and collection of information

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<sup>233</sup> I.R.C. § 42

<sup>234</sup> I.R.C. § 45D

<sup>235</sup> Blaine G. Saito, *Collaborative Governance and the Low-Income Housing Tax Credit*, 39 VA. TAX REV. \_\_, \_\_ (forthcoming 2020).

<sup>236</sup> *Id.* at \_\_.

<sup>237</sup> *Id.* at \_\_.

<sup>238</sup> *Id.* at \_\_.

to the partner agency.”<sup>239</sup> Using the co-agency’s forms avoids complications associated with reporting on tax returns, which are governed by confidentiality rules under I.R.C. § 6103, but it also creates additional program costs.

Realistically, a successful collaboration, would be costly. These costs would be incurred in addition to the more general taxpayer compliance costs associated with competitive application procedures. If aggregate costs are too high relative to the programmatic benefits, then this may be a reason to reject place-based tax incentives as a policy tool. Indeed, “a familiar argument for converting tax expenditures to direct expenditures is reducing administrative costs.”<sup>240</sup> On the other hand, if the direct grant alternative would require a similar application process, then there is little to gain from switching to a direct grant approach. Meanwhile, the political advantages of the tax-based approach may justify the cost.

*Motivating Claimants to Invest in Low-profit Projects.* A final challenge to designing effective place-based tax incentives is to encourage investors to engage in transactions to fund projects that may generate little or no profit. For example, many of the community assets described above, such as social services organizations and community gardens, are not expected to generate profit. As a result, community assets may be more commonly associated with charities than for-profit investors. Nevertheless, a goal of place-based tax incentives is to attract private capital from investors who may not be nonprofit entities.

Two design features may help motivate claimants to participate in these low-profit projects. First, the law may be structured so that its value to investors does not depend on the success of an underlying project. For example: a law may adopt the tax equity model employed by the NMTC and LIHTC, each of which rely on sophisticated tax credit monetization structures.<sup>241</sup> Tax credit monetization involves the transfer of tax credits to for-profit investors who contribute capital to entities that fund projects.<sup>242</sup> By leveraging their investment, the tax credit claimants are able to generate rate of return from the tax credit itself, allowing it to profit on the

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<sup>239</sup> *Id.* at \_\_.

<sup>240</sup> Schizer, *supra* note 222, at 305.

<sup>241</sup> Layser, *Typology*, *supra* note 23, at 420. *See generally*, Thomas W. Giegerich, *Monetization of Business Tax Credits*, *The*, 12 FLA. TAX REV. 709 (2012) (discussing tax equity structures throughout the tax code).

<sup>242</sup> Layser, *Typology*, *supra* note 23, at 420.

transaction without reference to economic profits generated by the underlying project.<sup>243</sup>

An alternative model is the fund model used by the new Opportunity Zones law. The fund model delivers tax benefits directly to taxpayers who invest in funds that engage in qualifying activities.<sup>245</sup> In the context of Opportunity Zones, the initial tax preference takes the form of deferral of capital gains. In theory, the tax deferrals or exemptions received by investors could help attract investment in funds that provide financing to entities—such as tax-exempt organizations—that support projects in low-income communities.<sup>246</sup>

In practice, the value of deferrals alone is insufficient to motivate investment absent an expectation of profit.<sup>247</sup> As a result, the fund model may be a poor choice for place-based tax incentives unless it is combined with a tax equity approach. For example, a fund could be created for the purpose of investing in an entity that will receive tax credit allocations in connection with a tax equity transaction. Like traditional tax equity transactions, this would allow investors to capture some of the subsidy, but it could help expand the pool of investors who are willing to engage in the transactions beyond the financial institutions who traditionally participate in tax credit deals.<sup>248</sup>

Second, in addition to adopting one of the structures described above, the place-based tax incentives should be designed to specifically target investors who are willing to invest despite low financial returns. For example, lawmakers might consider requiring taxpayers to engage nonprofits in the transaction to earn the tax preference.<sup>249</sup> Alternatively, the law could target

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<sup>243</sup> Eric Usinger, *Using New Markets Tax Credits to Finance Commercial Real Estate Development*, J. AFFORDABLE HOUS. & CMTY. DEV. L. 269, 281 (2011).

<sup>245</sup> Layser, *Typology*, *supra* note 23, at 427.

<sup>246</sup> *Id.* at 418.

<sup>247</sup> *See infra* Part IV.B.2.

<sup>248</sup> *See infra* note 248 and accompanying text.

<sup>249</sup> In the context of the NMTC, for example, there are at least three ways that nonprofits participate in the transactions. The first, and simplest, way that the NMTC subsidizes tax-exempt organizations is by subsidizing loans extended to nonprofit entities. MICHAEL I SANDERS, HOW NONPROFIT ORGANIZATIONS CAN USE THE NEW MARKETS TAX CREDIT 2 (2009), <https://www.blankrome.com/siteFiles/publications//27E9C61B6D14DB754B19C370C53231B8.pdf>. In the second structure, the nonprofit creates a for-profit subsidiary that is certified as a CDE. The subsidiary CDE receives NMTC

financial investors who are motivated by regulatory concerns. For example, the overwhelming majority of LIHTC and NMTC investors are financial institutions seeking to comply with the Community Reinvestment Act (CRA).<sup>250</sup> This helps ensure a reliable, competitive pool of tax equity investors who are willing to invest despite low expected rates of return.<sup>251</sup> Targeting investors like these, who are willing to invest in low-profit projects, may be especially important when the objective is to promote investment in community assets or development that has high use-value for low-income residents.

\* \* \*

In sum, this Part has argued that place-based tax incentives can be used to target and reduce geographic inequality. It has shown how to design place-based tax incentives in a two-step process. First, the law should target areas that experience either spatial mismatch, disinvestment, or weak community infrastructure. Second, the law should include an incentive for claimants to engage in activities that would promote investment in job creation, development, or community assets. In addition to explaining how place-based tax incentives can conform to these principles, this Part also provided guidance for controlling costs, limiting administrative burdens, and motivating claimants to participate in low-profit projects.

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allocations and transfers them to for-profit investors in exchange for equity. *Id.* at 1. In the third structure, the nonprofit provides financing to help provide leverage for a for-profit investor's NMTC investment. *Id.* at 2. For example, a nonprofit and for-profit may each contribute money to a for-profit entity (the nonprofit extending a loan, and the for-profit contributing equity), and the for-profit would invest in a CDE in exchange for NMTCs. In this structure, the nonprofit has the least control over its investment; however, the CDE must provide legal assurance to the nonprofit that its activities will be consistent with the nonprofit's charitable purpose.

<sup>250</sup> 42 U.S.C. § 5301. The CRA requires financial institutions to invest in the low-income communities they service. Today, nearly all investment in tax-subsidized affordable housing and community development projects comes from financial institutions motivated primarily by the CRA. JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *THE DISRUPTION OF THE LOW-INCOME HOUSING TAX CREDIT PROGRAM: CAUSES, CONSEQUENCES, RESPONSES, AND PROPOSED CORRECTIVES* 4 (2009), [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/disruption\\_of\\_the\\_lihtc\\_program\\_2009\\_0.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/disruption_of_the_lihtc_program_2009_0.pdf) [hereinafter *DISRUPTION*].

<sup>251</sup> Nancy R. Amstadt, *The Community Reinvestment Act's Impact on Low Income Housing Tax Credit Investment Commentary: The Community Reinvestment Act and Low Income Housing Tax Credits*, J. AFFORDABLE HOUS. & CMTY. DEV. L. 399–414 (2017).

Although it is likely that few place-based tax incentives will be designed to adopt all of the best practices set forth in this Article, these principles nevertheless help establish a baseline for evaluating current and proposed place-based tax incentives. Using this baseline, the next Part will critique two prominent examples of place-based tax incentives that exist under current law: the New Markets Tax Credit and Opportunity Zones. It argues that the primary weakness of both laws is their failure to target places experiencing geographic inequality and, relatedly, their failure to promote activities tailored to reduce such inequities.

### III. CURRENT TAX INCENTIVES FAIL TO TARGET GEOGRAPHIC INEQUALITY

#### *A. Evaluating the New Markets Tax Credit*

Existing empirical analyses of place-based tax incentives suggest that they often *do not* benefit low-income people. For example, even when tax incentives have resulted in new jobs, those jobs have often failed to be filled by low-income workers.<sup>252</sup> Similarly, new development may help bring

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<sup>252</sup> Some studies have concluded that place-based tax incentives increase the employment rate among residents. Freedman, *Targeted Business Incentives*, *supra* note 204, at 340; Matias Busso, Jesse Gregory & Patrick Kline, *Assessing the Incidence and Efficiency of a Prominent Place Based Policy*, 103 AM. ECON. REV. 897, 923 (2013). However, others have found that new jobs created by these laws have not gone to local residents. Matthew Freedman, *Place-based programs and the geographic dispersion of employment*, 53 REG. SCI. & URB. ECON. 1, 7 (2015). For example, some research on enterprise zones has found that the tax incentives resulted in new jobs being added in target areas, but a study by the state of Maryland estimated that only 1 in 8 (about 12.5%) of new jobs created in enterprise zones went to zone residents. Stephen Billings, *Do Enterprise Zones Work?: An Analysis at the Borders*, 37 PUB. FIN. REV. 68, 88–89 (2009); Robert Rhermann, et. al., *Evaluation of the Enterprise Zone Tax Credit* 45 (Dept. of Leg. Serv., Aug. 2014), available at <http://www.mdeconomy.org/business-tax-credits-require-evaluation/>. Other studies have found no effect on resident employment rates, while still others have found that the incentives resulted in no net job creation at all. Andrew Hanson, *Local Employment, Poverty, and Property Value Effects of Geographically-Targeted Tax Incentives: An Instrumental Variables Approach*, 39 REG. SCI. URB. ECON. 721, 730 (2009); Joel A. Elvery, *The Impact of Enterprise Zones on Resident Employment: An Evaluation of the Enterprise Zone Programs of California and Florida*, 23, 57 ECON. DEV. Q. 44, 57 (2009); Jed Kolko & David Neumark, *Do Some Enterprise Zones Create Jobs?*, 29 J. POL'Y ANALYSIS & MGMT. 5, 24 (2010).

high-end commerce, gourmet groceries, or luxury condominiums.<sup>253</sup> One reason for these outcomes is that no existing law conforms to the design guidelines this Article recommends for place-based tax incentives.<sup>254</sup> As this Part will show, current place-based tax incentives fail to target places that may experience geographic inequality. Even when they do target such places, they do not promote investment that would help reduce those inequities.

To demonstrate these failings, this section provides analyses of the NMTC and the Opportunity Zones tax incentive. Introduced in 2000, the NMTC is a tax credit allocated to special entities certified as Community Development Entities (CDEs).<sup>255</sup> The CDEs pass the tax credits along to investors that contribute money to the CDEs for use to finance projects.<sup>256</sup> Under the statute, the CDE must use the money to make equity or debt investments in projects located in low-income areas.<sup>257</sup> In practice, most of the CDEs' investments take the form as debt contributions.<sup>258</sup> This Section will evaluate the NMTC based on the principles set forth in this Article.

### ***1. The NMTC Fails to Target Spatial Mismatch***

Spatial mismatch is sometimes cited as a justification for the NMTC,<sup>259</sup> which has been used to subsidize projects such as retail outlets, restaurants, manufacturing and wholesale businesses, office space, and other

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<sup>253</sup> Roger M. Groves, *The De-Gentrification of New Markets Tax Credits*, 8 FLA. TAX REV. 213, 225 (2006).

<sup>254</sup> Another reason may be that that all tax incentive programs suffer from failures associated with collaborative governance, whereby “private parties and the government share discretion in the operation of public programs.” Saito, *supra* note 235, at \_\_. Specifically, the privatized approach to place-based policies is plagued by the fact that “[t]he parties involved have, at times, significantly divergent interests.” *Id.*

<sup>255</sup> Donald J.; Lowry Marples Sean, *New Markets Tax Credit: An Introduction Note*, NEW MARKETS TAX CREDIT: AN INTRODUCTION 1 (2016).

<sup>256</sup> *Id.*

<sup>257</sup> I.R.C. § 45D.

<sup>258</sup> George Barlow & John Sciarretti, *Pairing NMTCs with Opportunity Zone Incentives*, Novogradac, April 5, 2018, <https://www.novoco.com/periodicals/articles/pairing-nmtcs-opportunity-zone-incentives> (noting that “NMTCs are generally used to subsidize loans”).

<sup>259</sup> Michael Henderson, *The Locational Patterns and Socioeconomic Effects of the New Markets Tax Credit and Low Income Housing Tax Credit in Distressed Metropolitan Census Tracts 3* (Apr. 30, 2018) (unpublished Ph.D. dissertation, Ga. St. University), *available at* [https://scholarworks.gsu.edu/pmap\\_diss/71](https://scholarworks.gsu.edu/pmap_diss/71).



uncategorized businesses that may be associated with job creation.<sup>260</sup> However, the law does not target areas that are likely to experience spatial mismatch. Instead, the law is drafted so that any census tract is eligible as long as the poverty rate is at least 20% or the median family income is less than 80% of the greater of statewide median family income or metropolitan area median family income.<sup>261</sup> As a result, in high-poverty cities like Chicago, a large portion of tracts qualify for the incentive—well exceeding the number of tracts that may experience spatial mismatch.

By way of illustration, Figure 1 of Appendix E shows that the Chicago census tracts that are eligible for the NMTC far exceed the number of tracts that may suffer from spatial mismatch.<sup>262</sup> To create this map, I recreated the map shown in Appendix C (discussed in Part II.A.1) and added shading to show the locations of NMTC eligible tracts. The eligible tracts, which are shaded in light gray, include the six census tracts that were identified in this Article as suffering from spatial mismatch, but they also include 521 tracts that do not suffer from spatial mismatch. Moreover, one NMTC eligible tract is in a job hot spot.<sup>263</sup>

The failure to target areas with spatial mismatch may limit the effectiveness of the tax incentive because residents' unemployment may not be explained by their distance from jobs. (They already live near jobs.) As a result, jobs created in these areas using the NMTC incentive may fail to remedy unemployment among residents, who face unrelated barriers to employment; new jobs are more likely to inure to outsiders.

## ***2. The NMTC Fails to Target Disinvestment***

The failure of the NMTC to target spatial mismatch could suggest a design flaw, or it could reflect the fact that the law is not intended to reduce

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<sup>260</sup> Data on file with author.

<sup>261</sup> I.R.C. § 45D(e)(1)(b)(ii).

<sup>262</sup> Tract eligibility for CY2019 based on 2011-2015 American Community Survey data was obtained via PolicyMap. PolicyMap, New Markets Tax Credit (NMTC) Eligibility Status For CY 2019 Using 2011-2015 Eligibility Data, <https://illinois.policymap.com/maps?p=148485&i=9894665&btd=6&period=2011-2015&lind=111&cx=-87.73234638957994&cy=41.8337381642591&cz=8&iwx=41.8369&iwy=-87.6848&iwtype=place&iwtab=0> (last visited Jan. 6, 2020).

<sup>263</sup> Tract 2819 was both NMTC eligible and identified as a hot spot for low-wage jobs.

spatial mismatch.<sup>264</sup> In addition to job-creating projects, the NMTC has been used to subsidize development of both residential and nonresidential properties, including mixed-used projects that include affordable housing units.<sup>265</sup> While commercial development may help create jobs that reduce spatial mismatch in some neighborhoods, a more immediate justification for many development projects is to reduce the harms caused by disinvestment.

However, Figure 2 of Appendix E shows that the NMTC fails to target areas that suffer from disinvestment, a fact that may limit its effectiveness at reducing geographic inequality. To create this map, I recreated the map shown in Figure 4 of Appendix D and shaded tracts that are eligible for NMTC investment. Once again, the number of tracts targeted under the NMTC program far exceed those that suffer from disinvestment. To the extent that reducing disinvestment is an important goal of the NMTC, the law would need to be amended to target areas that experience it.

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<sup>264</sup> DEP'T HOUS. & URBAN DEV., IMPLEMENTATION PLAN FOR THE WHITE HOUSE OPPORTUNITY AND REVITALIZATION COUNCIL 4 (2019), <https://www.hud.gov/sites/dfiles/Main/documents/WHORC-Implementation-Plan.pdf> [hereinafter HUD IMPLEMENTATION PLAN].

<sup>265</sup> On its face, the NMTC cannot be used to subsidize affordable housing. However, in practice, the NMTC is often used to help subsidize projects with a residential component. For example, mixed-used developments may be financed by pairing the NMTC with the low-income housing tax credit, which is a separate place-based tax incentive used to promote affordable housing development. *See generally* NIXON PEABODY LLC, COMBINING NMTCs WITH LIHTCS, (2008), [https://www.housingonline.com/Documents/Leveraging\\_NMTC\\_For\\_Land\\_Acquisition\\_Housing\\_and\\_Solar\\_Development.pdf](https://www.housingonline.com/Documents/Leveraging_NMTC_For_Land_Acquisition_Housing_and_Solar_Development.pdf) (explaining how the NMTC can be used in furtherance of affordable housing development). In those cases, the NMTC is used to subsidize equity investment for the commercial portion of the mixed-use housing project. *Id.* Alternatively, the transaction may be structured as loans to developers located in low-income communities. Bendix Anderson, *For-Sale Housing from NMTCs*, HOUS. FIN., Sept. 1, 2008, [https://www.housingfinance.com/policy-legislation/for-sale-housing-from-nmtcs\\_o](https://www.housingfinance.com/policy-legislation/for-sale-housing-from-nmtcs_o). In those cases, the developers “can borrow through the NMTC program just like any other company sited in the neighborhood” in order to build housing without having to meet any commercial-income requirement. *Id.* As a result, the NMTC has frequently been used to subsidize the development of housing projects that may or may not incorporate a commercial real-estate component.

### ***3. The NMTC's Capacity to Target Weak Community Infrastructure is Unknown***

For the reasons discussed in Part II.A.3., it is difficult to assess whether the NMTC targets areas that suffer from weak community infrastructure. It is worth noting, however, that the NMTC has been used to subsidize institutions, spaces, and businesses that could impact community infrastructure in targeted neighborhoods. Several features of the NMTC contribute to its capacity to attract investors to projects that may constitute community assets. These include (a) a certification process that ensures that CDEs have a social mission; (b) a tax credit amount that is unrelated to project profitability; (c) a competitive application process that enables the CDFI Fund to select socially valuable projects; and (d) the inclusion of debt among qualified investments, which enables CDEs to extend loans to nonprofits. These features make it easy for nonprofits to participate in NMTC transactions, increasing the likelihood that the subsidy will be used to fund community assets.

In addition to these design features, the NMTC enjoys an additional advantage: banking regulations create incentives for financial institutions to invest in NMTC transactions. As referenced above, the CRA requires financial institutions to extend credit and invest in low-income communities within their assessment areas.<sup>266</sup> Under the law, financial institutions receive points for NMTC investments.<sup>267</sup> The overwhelming majority of NMTC investors are financial institutions seeking credit under the CRA.<sup>268</sup> These investors are often willing and able to invest at low expected rates of return.<sup>269</sup>

As a result of features like these, the NMTC has successfully funded a variety of projects that may function as community assets. My own analysis of 443 NMTC-financed projects revealed that over half of the projects funded were neither development projects nor for-profit businesses associated with job creation—instead, they were projects that may

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<sup>266</sup> 42 U.S.C. § 5301. The CRA requires financial institutions to invest in the low-income communities they service.

<sup>267</sup> DISRUPTION, *supra* note 251.

<sup>268</sup> 42 U.S.C. § 5301. The CRA requires financial institutions to invest in the low-income communities they service. Today, nearly all investment in tax-subsidized affordable housing and community development projects comes from financial institutions motivated primarily by the CRA. DISRUPTION, *supra* note 251.

<sup>269</sup> *Id.*

constitute community assets.<sup>270</sup> These projects included community centers, youth centers, community gardens, charter schools, homeless and social services organizations, food kitchens, medical facilities, museums and cultural centers.<sup>271</sup>

By studying the impact of these and other NMTC projects on communities, researchers can gather data that will help develop the principles introduced in this Article. In a separate empirical project, I will use qualitative methods to examine how NMTC subsidized projects have fit into local neighborhood ecologies. Doing so will help gain further insight into what kinds of neighborhoods stand to benefit from this kind of investment. An important goal of this research would be to identify factors that may be used to develop metrics that help translate the concepts of “weak” or “strengthened” community infrastructure into quantifiable concepts that can help lawmakers design and administer more effective tax incentives.

### ***B. Evaluating Opportunity Zones***

In contrast to the NMTC, the Opportunity Zones tax incentives is structured using the fund model.<sup>272</sup> Under the law, investors who have capital gains from a disposition of an asset are permitted to reinvest their gain proceeds in an Opportunity Fund.<sup>273</sup> The Opportunity Fund is required to use that cash to acquire property in designated Opportunity Zones.<sup>274</sup> Though the statute defines census tract eligibility using similar criteria as is used for the NMTC, the actual Opportunity Zones were designated by state governors.<sup>275</sup> As this section will demonstrate, several features of the Opportunity Zones law limit its capacity to target geographic inequality, including but not limited to its failure to target areas experiencing it.

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<sup>270</sup> Data on file with author. *See supra* Part IIII.B.3.b for a discussion of pre-defined categories of community assets and the limitations of relying on categories to identify projects that will strengthen community infrastructure for low-income communities.

<sup>271</sup> *Id.*

<sup>272</sup> Laysner, *Typology*, *supra* note 23, at 427.

<sup>273</sup> I.R.C. § 1400Z-2.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

### ***1. Opportunity Zones Fail to Target Spatial Mismatch***

Analysts at the tax think-tank Tax Foundation have cited spatial mismatch as a justification for Opportunity Zones.<sup>276</sup> However, as demonstrated in Figure 1 of Appendix F, Opportunity Zones in Chicago fail to target areas with spatial mismatch. I created this map by recreating the spatial mismatch map shown in Appendix C (discussed in Part II.A.1 above), and I shaded the tracts that have been designated as Opportunity Zones.

Though the number of tracts designated as Opportunity Zones is fewer than those eligible for NMTC funds, the number still vastly exceed those that may suffer from spatial mismatch. The Opportunity Zones include four out of the six tracts this Article identified as possible areas of spatial mismatch, but they also include another 131 tracts that probably do not suffer from spatial mismatch. In short, despite some claims that Opportunity Zones may help address spatial mismatch, the law does not target areas experiencing spatial mismatch in Chicago and is unlikely to reduce geographic inequality through job creation.

### ***2. Opportunity Zones Are Unlikely to Remedy Disinvestment***

A more commonly stated goal of the Opportunity Zones incentive is to spur development. Development may help reduce geographic inequality if it targets areas experiencing disinvestment and promotes development that has high use-value to low-income residents. In fact, Figure 2 of Appendix F shows that in Chicago, Opportunity Zones do include many neighborhoods that may suffer from disinvestment. To create this map, I first symbolized both vacancy hot spots<sup>277</sup> and high-poverty census tracts within those hot spots.<sup>278</sup> I then shaded the tracts that have been designated as Opportunity Zones.

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<sup>276</sup> SCOTT EASTMAN & NICOLE KAEDING, TAX FOUND., NO. 630, OPPORTUNITY ZONES: WHAT WE KNOW AND WHAT WE DON'T 17 (2019) (explaining that spatial mismatch theory “argues people can become trapped in low-income areas for several reasons, such as an inability to incur the cost of moving to and living in a more productive area,” and “place-based incentives can draw investment that will generate employment opportunities for immobile residents”).

<sup>277</sup> See *infra* Appendix D, at Figure 3.

<sup>278</sup> See *infra* Appendix D, at Figure 4.

The analysis above identified 39 tracts as possibly suffering from disinvestment due to a combination of high vacancies and high poverty.<sup>279</sup> Out of these 39 census tracts, 29 (74.4%) have been designated as Opportunity Zones. Overall, 83 out of the 135 designated Opportunity Zones (61.5%) are located in areas that were vacancy hot spots during the months preceding designation.

This suggests that, although the law could more narrowly target areas suffering from disinvestment, many of the Opportunity Zones in Chicago do seem to target areas that may suffer from disinvestment. Here, it is important to note that Opportunity Zones were designated by state governors, and they were selected from a field of eligible tracts that were already NMTC eligible.<sup>280</sup> Since governors in different localities may have had different goals when designating Opportunity Zones, the zone patterns may vary considerably across geographies.

Moreover, the effectiveness of Opportunity Zones at reducing geographic inequality in the targeted areas turns on what kinds of investment activities are promoted by the law. As discussed in Part II.B, geographic inequality due to disinvestment can be reduced first by rehabilitating the built environment. Some features of the Opportunity Zones law may inadvertently prevent funds from rehabilitating vacant spaces for affordable uses. Under the rules, an Opportunity Fund must either be the first to use property in the zone (the “original use” requirement), or it must substantially improve previously used property.<sup>281</sup>

These rules may inadvertently present barriers to rehabilitation for affordable uses. Vacant property does not satisfy the “original use” requirement unless it has been vacant for at least one year (if it was vacant prior to designation) or three years (if it became vacant after designation).<sup>282</sup> This means that, to hold vacant property that has not satisfied these waiting periods, an Opportunity Fund must substantially improve it. Under the law, substantial improvement means doubling the property’s basis.<sup>283</sup> Presumably, the purpose of this requirement was to discourage use of the law to subsidize projects that would have been completed without the subsidy.

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<sup>279</sup> *See supra* Part III.A.2.

<sup>280</sup> I.R.C. § 1400Z-1(c)(1) (defining “low-income communities” with reference to I.R.C. § 45D (new markets tax credit)).

<sup>281</sup> I.R.C. § 1400Z-2(d)(2)(D).

<sup>282</sup> Investing in Qualified Opportunity Zones, 85 Fed. Reg. 1866 (Jan. 13, 2020).

<sup>283</sup> I.R.C. § 1400Z-2(d)(2)(D)(ii).

However, this substantial improvement requirement may discourage investors from rehabilitating vacant property for affordable residential uses. In comments on the proposed regulations, the Chief Executive Officer of an affordable and workforce housing development company explained that the substantial improvement provisions “would make no economic sense, since the older buildings need only light renovation to bring them to excellent condition and the wasted expenditure fixing what is not broken would make the entire project unaffordable.”<sup>284</sup> Though the final regulations may have helped alleviate this concern,<sup>285</sup> it is unclear to what extent the substantial improvement requirement may continue to present a barrier to affordable housing development. A better approach would be to exempt affordable housing development from the substantial use requirements.

To reduce geographic inequality, the tax incentive must not only encourage rehabilitation of the built environment, but it must also prioritize development like affordable housing that has high use-value to low-income residents. By presenting barriers to affordable housing development, the rules governing rehabilitation of vacant property may limit the law’s capacity to reduce geographic inequality.<sup>286</sup> In addition, two other features will further limit the law’s capacity to target geographic inequality: the law’s inability to make low-profit investment more profitable, and specific incentives to maximize profit.

First, nothing about the Opportunity Zones tax preference can make a low-profit project any more profitable. The Opportunity Zones law is structured according to the fund model.<sup>287</sup> Investors receive tax deferrals and exemptions associated with actual capital gains, but they do not engage in tax equity transactions that would enable them to profit from the tax break itself. If the Opportunity Fund’s underlying investment fails, investors may lose their investment. This creates a disincentive to invest in risky, low-profit projects like affordable housing.

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<sup>284</sup> Letter from Daryl J. Carter, Chairman and Chief Executive Officer of Avanath Capital Management, LLC, to Ms. Jennifer DeCaspers, Chief of Staff of the Internal Revenue Service, dated June 6, 2019.

<sup>285</sup> A chief concern raised by Mr. Carter in his comment letter was the asset-by-asset method of calculating substantial improvement. *Id.* The final regulations loosened the asset-by-asset requirements in the case of pre-owned buildings. *See Investing in Qualified Opportunity Zones*, 85 Fed. Reg. 1866 (Jan. 13, 2020).

<sup>286</sup> De Barbieri, *Opportunism*, *supra* note 206.

<sup>287</sup> Laysner, *Typology*, *supra* note 23, at 427.

Second, the Opportunity Zones law specifically rewards high-profit investment. One of the most valuable tax breaks included in the Opportunity Zones law is the full exclusion of all post-investment capital gains generated by an Opportunity Fund interest held for at least ten years.<sup>288</sup> If property held by an Opportunity Fund appreciates in value by becoming profitable, the investor can enjoy that profit tax-free as long as the holding periods are met. This makes Opportunity Zones an attractive option for investors who expect their investments to be profitable.

Early indicators are that Opportunity Fund investors are prioritizing high-profit real estate projects. For example, as of September 2019, roughly \$1 billion “in mostly market-rate real estate projects eligible for the tax break have been announced so far across the [Denver] area’s 37 opportunity zones.”<sup>289</sup> Similar stories about luxury real estate projects in Opportunity Zones have been reported in cities like Miami, and “[b]ackers of the opportunity-zone program say luxury projects are the easiest to finance, which is why those have been happening first.”<sup>290</sup> A proposed amendment to the law would limit investors’ ability to invest in luxury condominiums,<sup>291</sup> but the law is unlikely to pass in the current political environment. As a result, the Opportunity Zones law will remain poorly positioned to target geographic inequality due to disinvestment.

### ***3. Opportunity Zones Fail to Target Weak Community Infrastructure***

For the reasons stated above,<sup>292</sup> it is difficult to assess whether the Opportunity Zones law targets areas with weak community infrastructure. But even if it does, the Opportunity Zones law will not promote investment in community assets. This Article has shown that to promote investment in community assets, an incentive would need to motivate claimants who are willing to invest in low-profit investments. This can be accomplished by creating opportunities for nonprofit organizations, which have charitable

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<sup>288</sup> I.R.C. § 1400Z-2.

<sup>289</sup> Sophie Quinton, *Luxury Apartments Get the Tax Breaks Meant to Boost Low-Income Areas*, PEW STATELINE, Sept. 25, 2019, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/09/25/luxury-apartments-get-the-tax-breaks-meant-to-boost-low-income-areas>.

<sup>290</sup> Jesse Drucker & Eric Lipton, *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, THE NEW YORK TIMES, Aug. 31, 2019, <https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>.

<sup>291</sup> See S.2787 (Opportunity Zone Reporting and Reform Act).

<sup>292</sup> See *supra* Part III.A.3.



purposes and are prohibited from distributing profits to owners, to participate in the transactions.

Theoretically, opportunities exist for nonprofits to participate in Opportunity Fund transactions. In practice, such collaboration with the nonprofit sector is unlikely. A major reason is that Opportunity Funds are unable to provide credit to nonprofit organizations, which look to borrowing as a funding source. Opportunity Funds are required to make equity investments, and they cannot make debt investments. Yet, nonprofit organizations are prohibited from having equity owners. As a result, funds are unable to use the money they raise to support nonprofit entities directly.

In theory, Opportunity Funds could partner with nonprofits to fund joint projects. However, many of the high profit uses promoted by the law would be inconsistent with a nonprofit's charitable purposes. As a result, options to engage the nonprofit community are limited. In addition, it is unclear under current law whether Opportunity Zone investments will qualify for banks' CRA credit,<sup>293</sup> further limiting access to investors who may be willing to invest in low-profit projects. These features of the law, combined with the strong incentives to invest in high-profit projects, make it unlikely that Opportunity Zones will ever be used to support investment in community assets. Thus, even if it could be shown that Opportunity Zones target areas with weak community infrastructure, they will not reduce geographic inequality in these areas.

#### IV. CONCLUSION

Researchers across disciplines increasingly view neighborhood inequality as an intractable, structural source of inequality that disproportionately impacts racial minorities. People-based policies alone are insufficient to address these harms. This reality demands a policy response. Place-based tax incentives are often used by federal, state, and local governments to target low-income communities, yet they often fail to benefit low-income residents. This Article has shown that a significant weakness of current place-based tax incentives is their failure to target areas where residents experience geographic inequality.

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<sup>293</sup> Mark O'Meara, *Experts Say Some OZ Investments Should be CRA Eligible*, NOVOGRADAC, Feb. 5, 2019, <https://www.novoco.com/periodicals/articles/experts-say-some-oz-investments-should-be-cra-eligible>.

By explaining when, where, and how to design place-based tax incentives, this Article has provided a much-needed baseline to evaluate existing tax incentives and to guide the design of new ones. This Article has argued that place-based tax incentives can be designed to reduce the underlying, geographic causes of neighborhood inequality. It has presented a two-step approach that first targets areas experiencing geographic inequality, and then promotes investment to reduce those inequities. It explained how place-based tax incentives can be designed to reduce spatial mismatch, reverse harmful disinvestment, and to strengthen community infrastructure.

However, this Article has also revealed significant challenges that suggest lawmakers should proceed with caution. Among them, it has highlighted how rarely job creation is likely to reduce geographic inequality in urban areas with public transportation, how redevelopment can fail to benefit low-income residents, and how data availability limits policymakers' ability to identify areas with weak community infrastructure. It has shown how difficult it will be to direct investment to areas that are experiencing geographic inequality rather than over- or under- shooting the target. And it has revealed how the solutions to these challenges, while not theoretically insurmountable, would be costly to governments and taxpayers.

In short, the analysis in this Article suggests that, in many cases, place-based tax incentives should not be used at all. Nevertheless, place-based tax incentives are increasingly used for community development, and that trend is likely to continue for the foreseeable future. Current laws will continue to draw critique, and critics will continue to propose reforms. Even if the ideal set forth in this Article is currently unobtainable in practice, this Article has nevertheless established a standard against which all improvements to existing law can be measured—and even incremental improvement would help reduce geographic inequality.

## APPENDIX A INTERACTIVE MAPS

All maps reproduced in this Article were mapped and analyzed by the author using ArcGIS Desktop. The final map layers and underlying attribute tables are visible for public viewing on ArcGIS Online at the addresses listed below. From the landing page, please click the link to “View In: ArcGIS.com Map.” Note that map layers can be turned on or off to adjust the display. Clicking on map features displays descriptive data. Descriptions of each individual layer, including links to the source data, can be viewed by clicking on the layer name on the landing page.

| <b>Map Description</b>   | <b>Figures</b>   | <b>URL</b>  |
|--|--|---|
| <b>Spatial Mismatch:</b> Map to demonstrate how place-based tax incentives can be designed to target places that may experience spatial mismatch.  | Appendix B<br>Appendix E: Figure 1<br>Appendix F: Figure 1                                   | <a href="https://services.arcgis.com/GLOfWlNkwysZaKeV/arcgis/rest/services/Chicago_Spatial_Mismatch_Analysis/FeatureServer">https://services.arcgis.com/GLOfWlNkwysZaKeV/arcgis/rest/services/Chicago_Spatial_Mismatch_Analysis/FeatureServer</a> |
| <b>Disinvestment (Redlining):</b> Map to demonstrate how place-based tax incentives can be designed to target places that may experience disinvestment related to prior redlining policies.                                  | Appendix D: Figure 1<br>Appendix D: Figure 2   | <a href="https://services.arcgis.com/GLOfWlNkwysZaKeV/arcgis/rest/services/Chicago_Redline_Analysis_A/FeatureServer">https://services.arcgis.com/GLOfWlNkwysZaKeV/arcgis/rest/services/Chicago_Redline_Analysis_A/FeatureServer</a>               |
| <b>Disinvestment (Vacancies):</b> Map to demonstrate how place-based tax incentives can be designed to target places that may experience disinvestment by analyzing the spatial patterns of vacant and abandoned properties. | Appendix D: Figure 3<br>Appendix D: Figure 4<br>Appendix E: Figure 2<br>Appendix F: Figure 2 | <a href="https://services.arcgis.com/GLOfWlNkwysZaKeV/arcgis/rest/services/Chicago_Vacancy_Analysis/FeatureServer">https://services.arcgis.com/GLOfWlNkwysZaKeV/arcgis/rest/services/Chicago_Vacancy_Analysis/FeatureServer</a>                   |

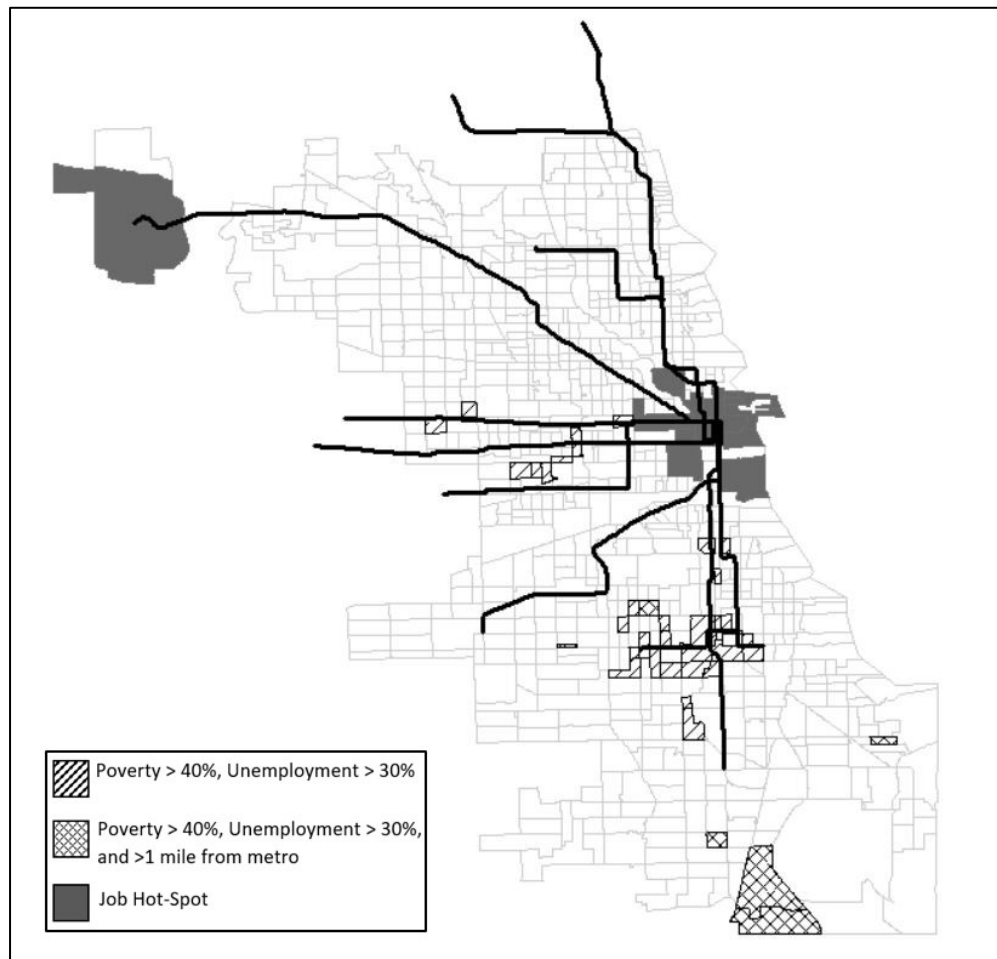
**APPENDIX B**  
**DIRECT VS. TAX Expenditures on Community Development**<sup>294</sup>

| Year | Direct Expenditures (billions) | Tax Expenditures (billions) |            |                |            |                   |
|------|--------------------------------|-----------------------------|------------|----------------|------------|-------------------|
|      | Community Development Fund     | New Market Tax Credit       | Emp. Zones | Renewal Comm's | Opp. Zones | Total Tax Expend. |
| 2005 | <b>4.702</b>                   | 0.4                         | 0.7        | 0.5            | 0          | <b>1.6</b>        |
| 2006 | <b>4.178</b>                   | 0.5                         | 0.7        | 0.5            | 0          | <b>1.7</b>        |
| 2007 | <b>3.772</b>                   | 0.7                         | 0.6        | 0.7            | 0          | <b>2</b>          |
| 2008 | <b>3.867</b>                   | 0.9                         | 0.8        | 0.7            | 0          | <b>2.4</b>        |
| 2009 | <b>3.9</b>                     | 1                           | 0.8        | 0.5            | 0          | <b>2.3</b>        |
| 2010 | <b>4.45</b>                    | 0.7                         | 0.5        | 0.2            | 0          | <b>1.4</b>        |
| 2011 | <b>3.501</b>                   | 0.4                         | 0.4        | 0              | 0          | <b>0.8</b>        |
| 2012 | <b>3.008</b>                   | 0.7                         | 0.6        | 0              | 0          | <b>1.3</b>        |
| 2013 | <b>3.135</b>                   | 0.9                         | 0.3        | 0              | 0          | <b>1.2</b>        |
| 2014 | <b>3.1</b>                     | 1                           | 0.2        | 0              | 0          | <b>1.2</b>        |
| 2015 | <b>3.066</b>                   | 1.1                         | 0.2        | 0              | 0          | <b>1.3</b>        |
| 2016 | <b>3.06</b>                    | 1.2                         | 0.3        | 0              | 0          | <b>1.5</b>        |
| 2017 | <b>3.06</b>                    | 1.2                         | 0.2        | 0              | 0          | <b>1.4</b>        |
| 2018 | <b>3.365</b>                   | 1.3                         | 0.2        | 0              | 1.5        | <b>3</b>          |
| 2019 | <b>3.365</b>                   | 1.3                         | 0          | 0              | 3.5        | <b>4.8</b>        |

<sup>294</sup> For source data, *see* Appendix A.

**APPENDIX C  
MAPPING SPATIAL MISMATCH**

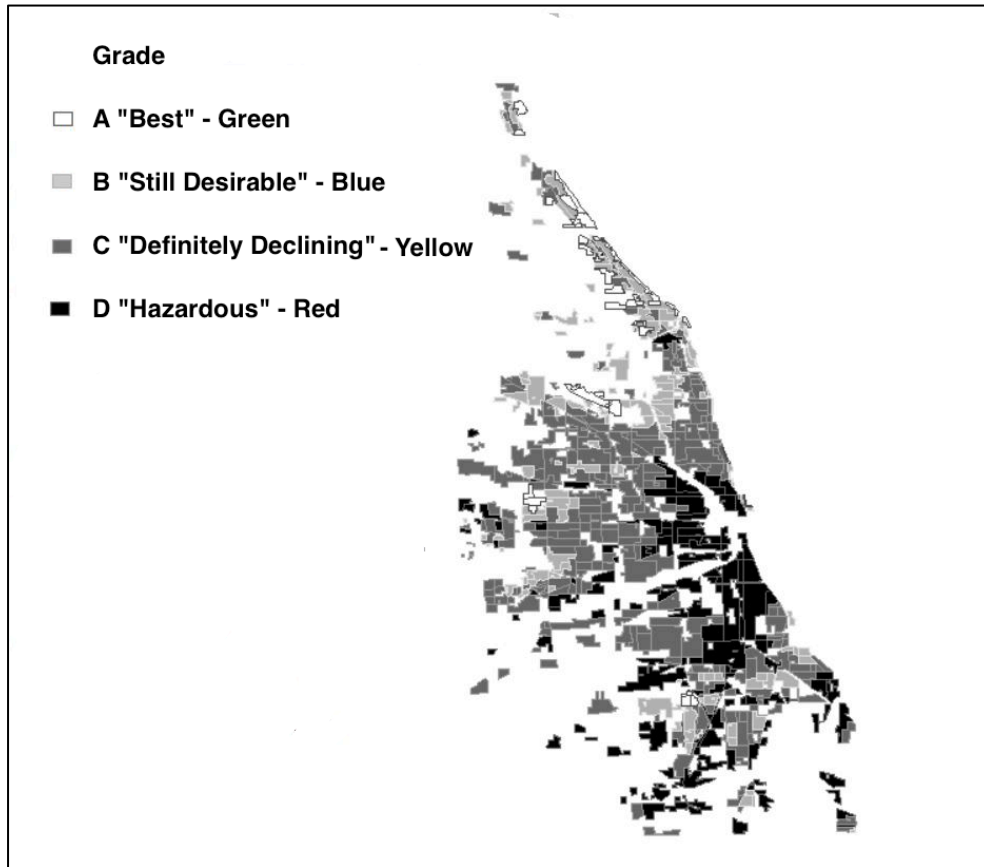
**FIGURE 1  
HIGH-POVERTY/HIGH-UNEMPLOYMENT CENSUS TRACTS VS. THE  
LOCATIONS OF LOW-WAGE JOBS IN CHICAGO<sup>295</sup>**



<sup>295</sup> For source data, *see* Appendix A.

**APPENDIX D**  
**MAPPING DISINVESTMENT**

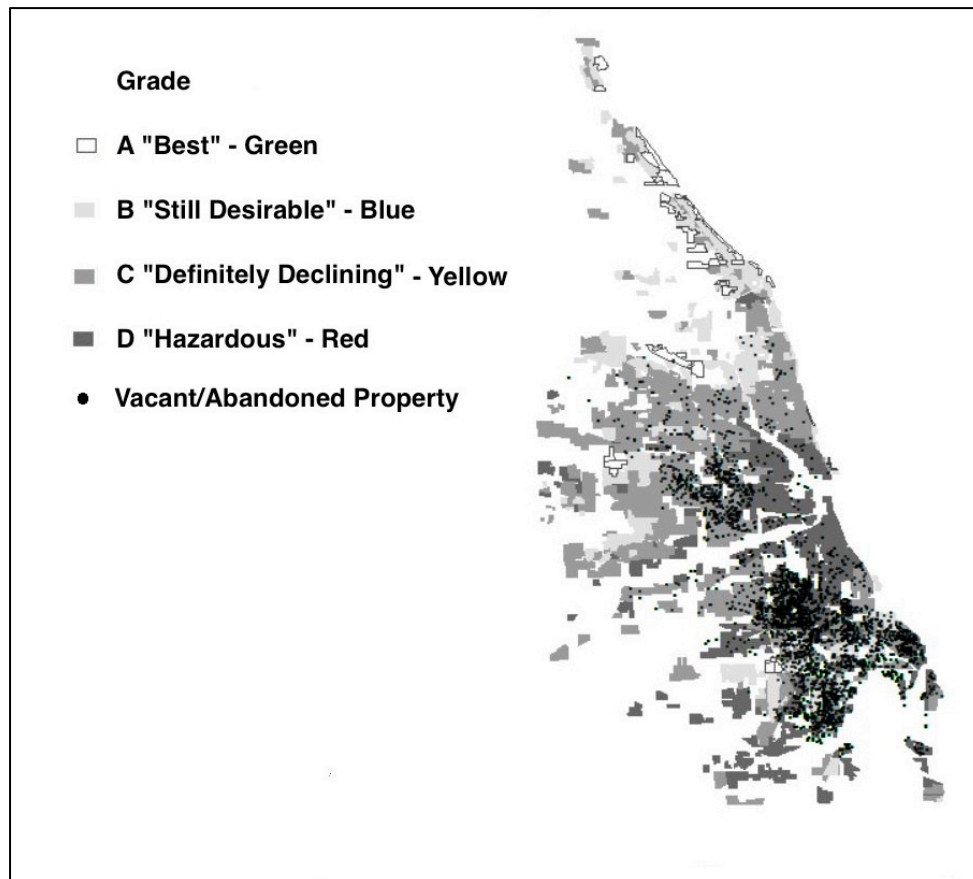
**FIGURE 1**  
**CHICAGO 1940 HOLC REDLINING MAP<sup>296</sup>**



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<sup>296</sup> For source data, *see* Appendix A.

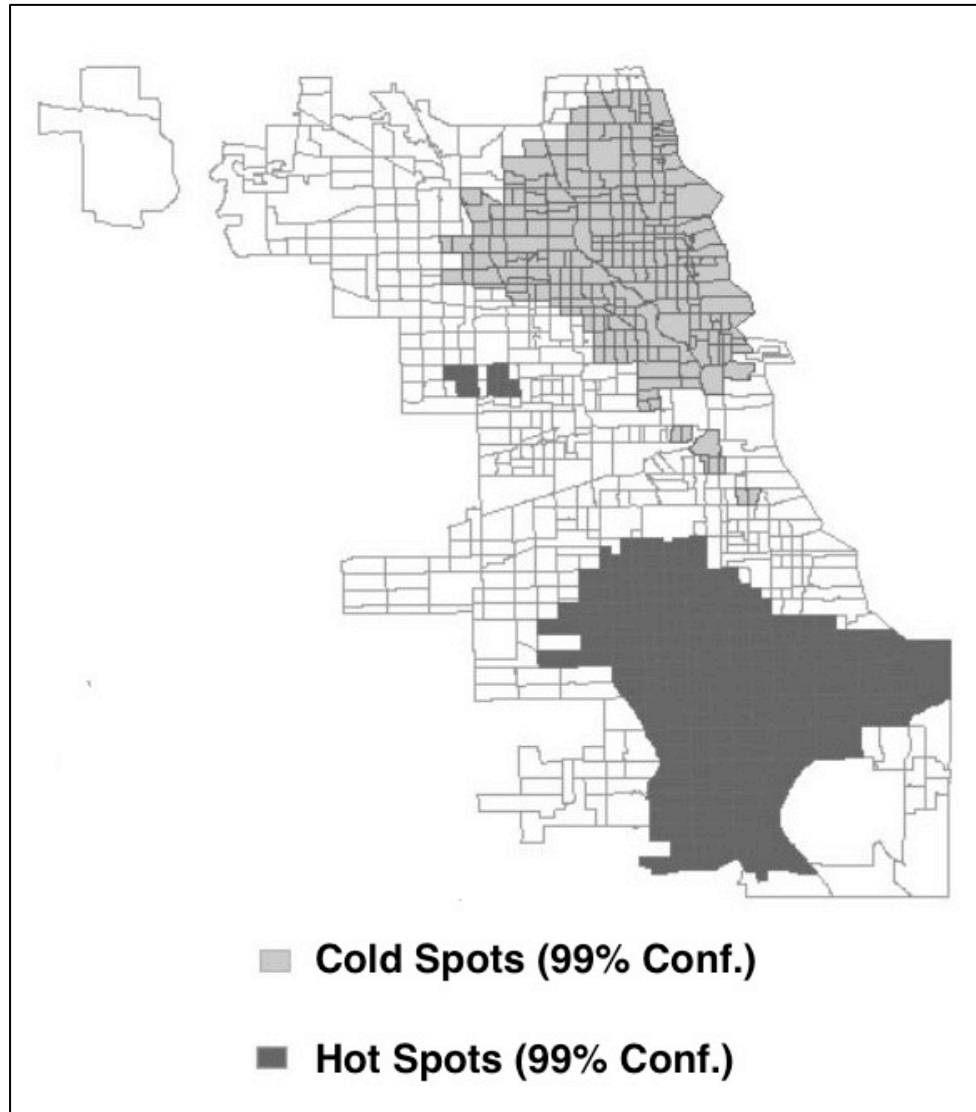
**FIGURE 2**  
**PROPERTIES REPORTED AS VACANT OR ABANDONED TO THE CITY OF CHICAGO IN 2017-2018 VS. 1940 HLOC REDLINING MAP<sup>297</sup>**



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<sup>297</sup> For source data, *see* Appendix A.

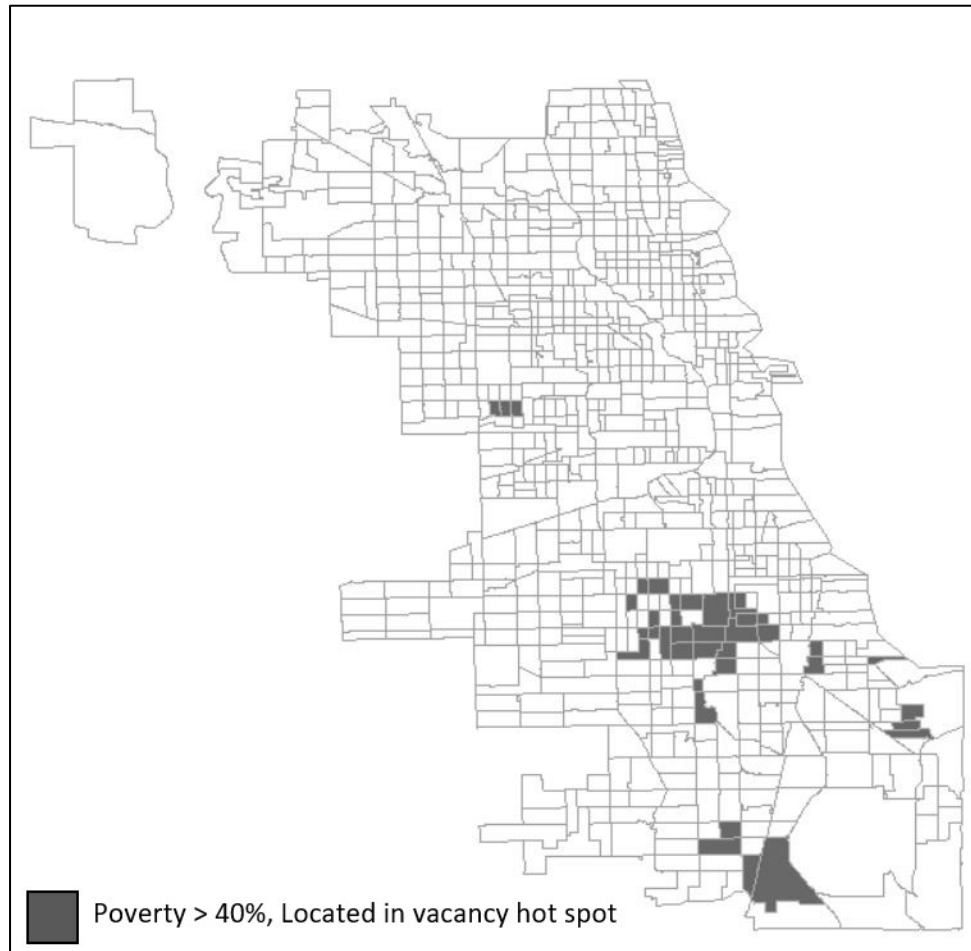
**FIGURE 3**  
**CHICAGO VACANT PROPERTY HOT AND COLD SPOTS**  
**(JAN. 1, 2017 – MARCH 21, 2018)<sup>298</sup>**



<sup>298</sup> For source data, *see* Appendix A.



**FIGURE 4**  
**CHICAGO VACANT PROPERTY HOT SPOTS**  
**(JAN. 1, 2017 – MARCH 21, 2018)**  
**WITH HIGH POVERTY<sup>299</sup>**

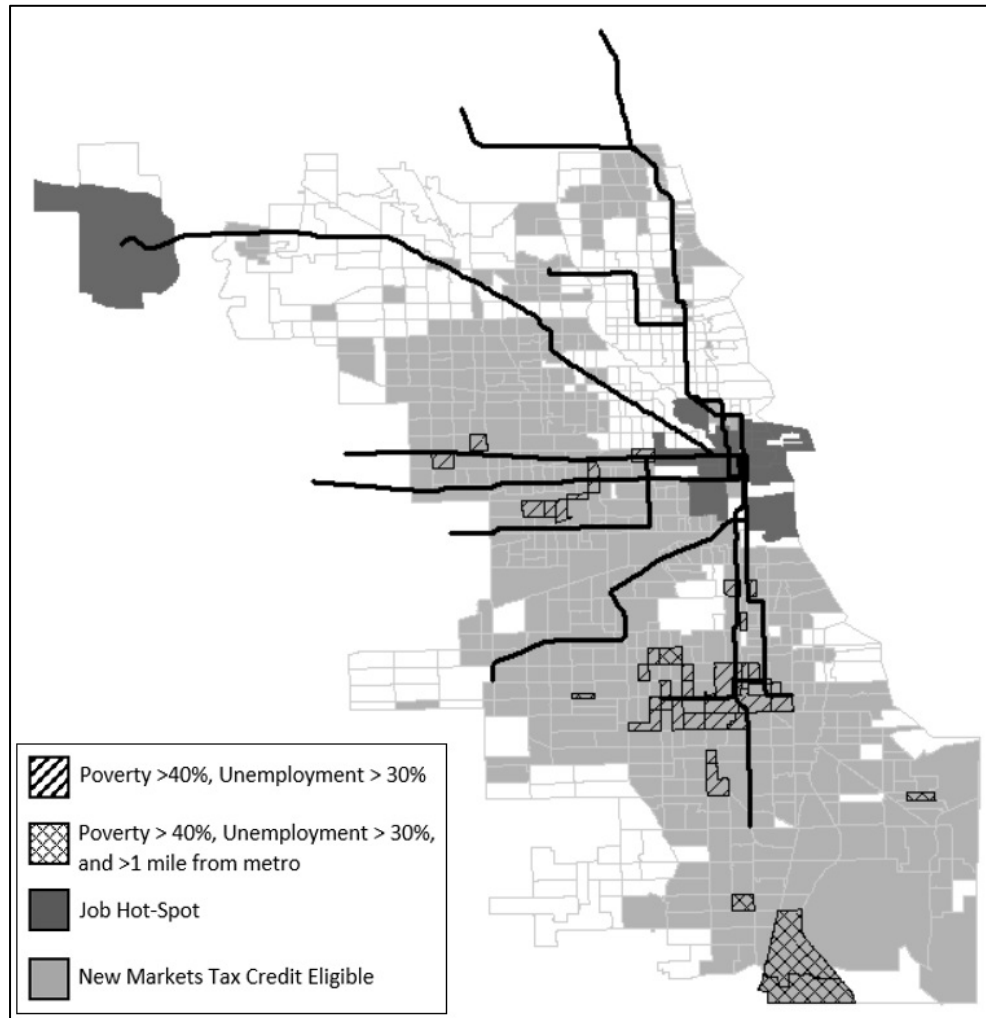


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<sup>299</sup> For source data, *see* Appendix A.

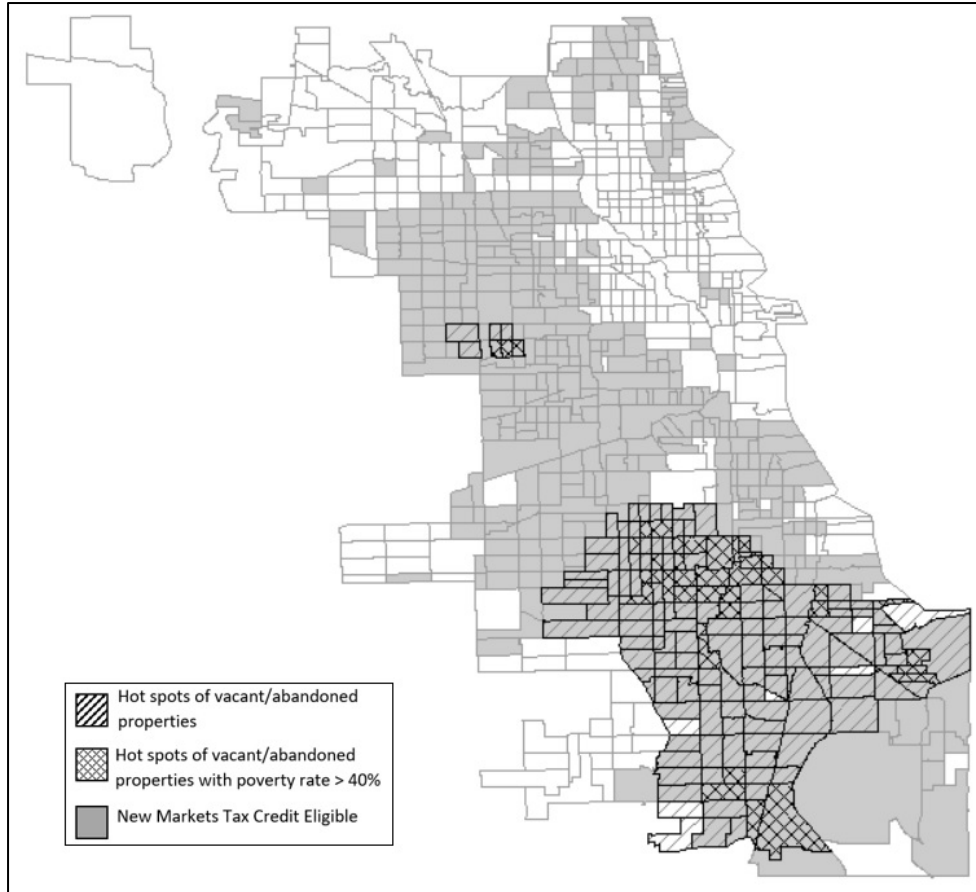
**APPENDIX E**  
**GEOSPATIAL ANALYSIS OF THE NEW MARKETS TAX CREDIT**

**FIGURE 1**  
**NEW MARKETS TAX CREDIT ELIGIBLE VS. POSSIBLE SPATIAL MISMATCH<sup>300</sup>**



<sup>300</sup>For source data, *see* Appendix A.

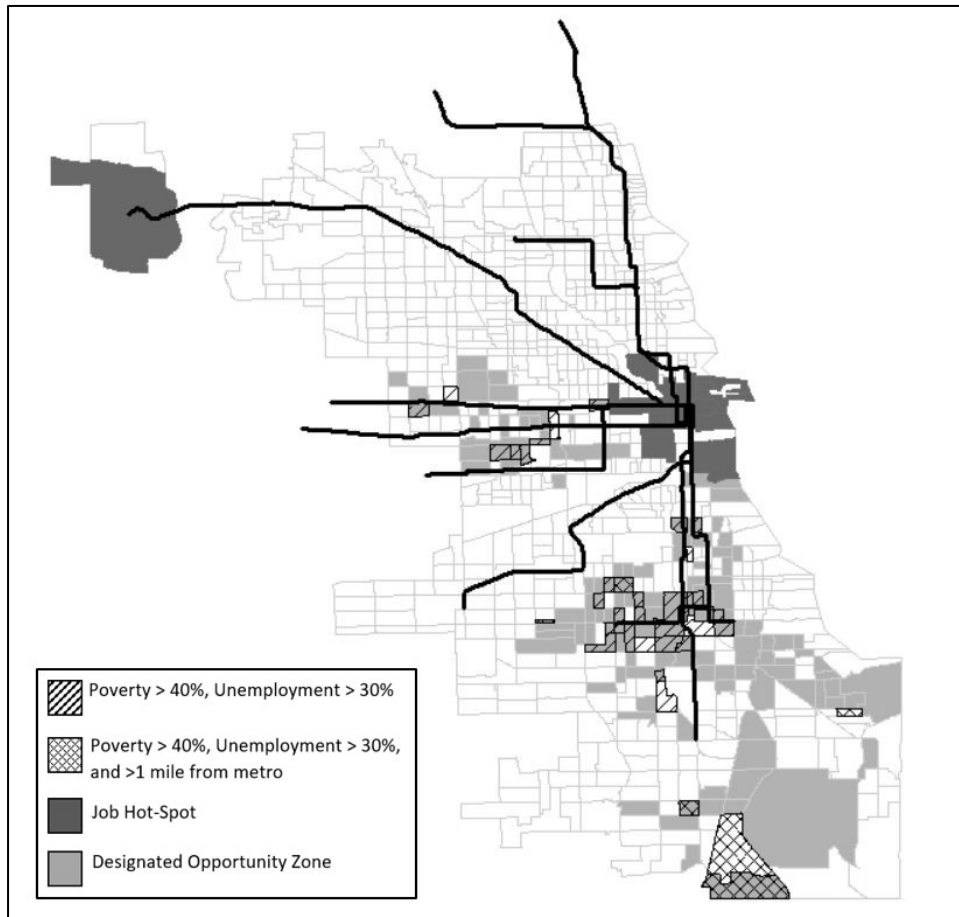
**FIGURE 2**  
**NMTC ELIGIBLE VS. POSSIBLE DISINVESTMENT**<sup>301</sup>



<sup>301</sup> For source data, *see* Appendix A.

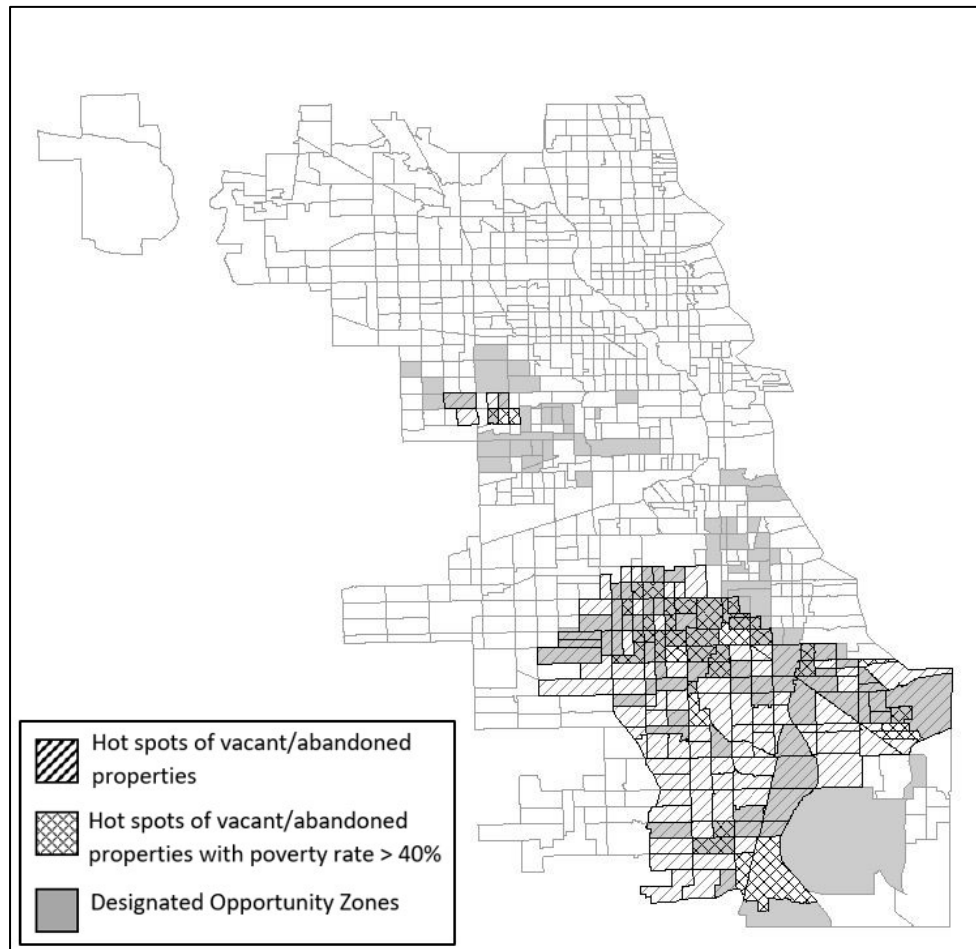
**APPENDIX F**  
**GEOSPATIAL ANALYSIS OF OPPORTUNITY ZONES**

**FIGURE 1**  
**CHICAGO OPPORTUNITY ZONES VS. POSSIBLE SPATIAL MISMATCH<sup>302</sup>**



<sup>302</sup> For source data, *see* Appendix A.

**FIGURE 2**  
**DESIGNATED OPPORTUNITY ZONES VS. POSSIBLE DISINVESTMENT**<sup>303</sup>



<sup>303</sup> For source data, *see* Appendix A.