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How Federal Tax Law Rewards Housing Segregation

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INTRODUCTION

Residual, de facto segregation is among the most enduring barriers to equal opportunity in America.[1] Nearly five decades after the Fair Housing Act of 1968, Blacks and Latinos still tend to live in neighborhoods where the majority of residents are people of color.[2] Such racial segregation is often accompanied by economic segregation. One legal scholar has noted that "[e]xposure to extensive poverty is the norm for most blacks and Latinos, while *the opposite* is true for most whites and Asians."[3] Meanwhile, sociologists, housing law scholars, and poverty law experts have stressed the importance of residential location to the impact of poverty and the

1. PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY (2013); Sheryll Cashin, *Place, Not Race: Affirmative Action and the Geography of Educational Opportunity*, 47 U. MICH. J.L. REFORM 935, 935 (2014) ("I reflect on how residual, *de facto* segregation and the stratified architecture of opportunity in our nation contribute to the achievement gap that has made race-based affirmative action necessary.").

2. Cashin*, supra* note 1, at 939.

3. *Id.* (emphasis in original).

potential for upward economic mobility.[4] Residential location may have "an effect over and above the effect of poverty alone on upward mobility, unemployment, and social problems, among other outcomes."[5]

Ben Carson, the Secretary of the Department of Housing and Urban Development (HUD), indicated during confirmation hearings in January 2017 that, while he does not believe the federal government should play a significant role in affirmative efforts to promote integration in housing, he supports such efforts by local HUD officials and state housing authorities.[6] In other words, Carson has advocated for limited

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4. *See, e.g.*, SHARKEY, *supra* note 1, at 5 ("When researchers analyze economic inequality or economic mobility across racial or ethnic groups, they often focus on characteristics of individuals and families within these groups, things like human capital, family structure, or culture . . . . This research offers valuable insights into the sources of inequality—but it often overlooks or minimizes the role of forces that lie outside the individual, or outside the home environment, that influence the fortunes of different racial and ethnic groups . . . . I focus on the importance of places—communities and cities—as crucial sites for the transmission of racial inequality in the post civil rights era."); Cashin, *supra* note 1, at 935–66; Douglas S. Massey & Mary J. Fischer, *The Geography of Inequality in the United States, 1950–2000*, 2003 BROOKINGS-WHARTON PAPERS ON URB. AFF. 1, 1 ("If income inequality rises during a period in which rich and poor families become more segregated, only one outcome is possible: affluence and poverty both will become more geographically concentrated. Families that are well-off financially will increasingly live near and interact with other affluent families, and those that lack economic resources will live near and interact mainly with other poor families. Under these circumstances, the social worlds of the rich and poor will increasingly diverge. The poor will tend to inhabit high-risk neighborhoods that significantly lower the odds of socioeconomic success, while the affluent will enjoy a safe and secure world that enhances the possibilities of success on a variety of fronts." (footnotes omitted)).

5. Tali Cassidy, Gabrielle Inglis, Charles Wiysonge & Richard Matzopoulos, *A Systematic Review of the Effects of Poverty Deconcentration and Urban Upgrading on Youth Violence*, 26 HEALTH & PLACE 78, 78 (2014); Lan Deng, *Comparing the Effects of Housing Vouchers and Low-Income Housing Tax Credits on Neighborhood Integration and School Quality*, 27 J. PLAN. EDUC. RES. 20, 20 (2007) ("Over the past several decades, scholars have come to understand that neighborhood quality contributes not only to quality of life but also to residents' social and economic opportunities.").

6. *Housing and Urban Development Confirmation Hearing Before the S. Banking, Hous. & Urban Affairs Comm.*, 115th Cong. (2017) (statement of Ben Carson Sr., M.D.), https://www.c-span.org/video/?421258-1/hud-secretary-nominee-ben-carson-testifies-confirmation-hearing&live [https://perma.cc/XB7N-4BZV] ("What I would encourage, I don't have any problem whatsoever with affirmative-action or integration. Have no no problem with that at all. But, I'd do have a problem with people all dictating it when they don't know anything about what's going on in the area. We have local HUD officials and where people who can assess what the problems are in their area and working with local officials can come up with better solutions than a one size fits all cookie-cutter program from people in Washington, D.C. That's the part. I'm sorry with five minutes your objection is not to affirmative further. The objection objection as to whether that's done with Washington or the HUD office in Clovis, Ohio. It is central dictation to people's lives." (mistakes in original)). HUD implemented a final rule in July 2015 to lend teeth to its duty to affirmatively further fair housing (the "AFFH Rule"), which has existed since the enactment of the Fair Housing Act of 1968. Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576 & 903); Fair Housing Act of 1968 § 808, 42 U.S.C. § 3608 (2012). The final rule requires state and local governments to use a new assessment tool, expands

federal interference with the efforts of state and local housing authorities, whether by requiring them to affirmatively further integration policies or by restraining their efforts to do so. But an unlikely source of federal housing law—the tax code—may, in fact, interfere with such efforts.[7] Not only are tax credits the primary federal subsidy for new construction of affordable rental housing projects,[8] but prior to the Tax Cuts and Jobs Act of 2017 (the "TCJA") the tax code also delivered approximately $129.8 billion in annual tax-based subsidies to homeowners.[9] Changes under the TCJA scaled back or eliminated some benefits to homeowners, but current law is still expected to deliver approximately $75.1 billion in annual tax-based subsidies.[10]

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access to data related to key fair housing issues, and institutes new procedural requirements. 80 Fed. Reg. at 42,272. Soon after the rule was finalized, Ben Carson authored an op-ed criticizing the rule as an example of "social engineering." Ben S. Carson, op-ed, *Experimenting with Failed Socialism Again*, WASH. TIMES (July 23, 2015), https://www.washingtontimes.com/news/2015/jul/23/ben-carson-obamas-housing-rules-try-to-accomplish [https://perma.cc/RK63-HD4R]. At the time of writing, a bill to nullify the AFFH Rule had been introduced and referred to the House Committee on Financial Services. Local Zoning Decisions Protection Act of 2017, H.R. 482, 115th Cong. (2017).

7. The Reagan administration effectively ended all nontax federal programs in support of low-income rental housing in the 1980s by slashing the budget for the Section 8 tenant-voucher program and cutting funding for new public housing projects, replacing them with tax laws that shifted the responsibility for providing affordable housing from HUD to the Internal Revenue Service. *See infra* note 21.

8. I.R.C. § 42 (Westlaw through Pub. L. No. 115-140) provides a credit to housing developers that agree to set aside a certain number of units as rent-controlled affordable housing for qualified tenants. The credit is available for the first ten years of a fifteen-year compliance period. I.R.C. § 42(f)(1) (defining the credit period), (i)(1) (defining the compliance period). Each state is allocated a per capita number of credits to be allocated by state and local housing authorities through a competitive process in accordance with state qualified allocation plans. I.R.C. § 42(h)(3)(C) (state housing credit ceiling), (m)(1)(B) (qualified allocation plan). Credits are available for new construction and rehabilitation of existing affordable rental properties. I.R.C. § 42(d). Developers who receive the credits usually sell them to investors in order to monetize the credits for the purposes of financing their projects. *See* Michael J. Novogradac, *Investing in Low-Income Housing Tax Credits*, COMMUNITY DEV. (March 2010), https://web.archive.org/web/20170124231503/https://www.occ.gov/static/community-affairs/community-developments-investments/spring06/investinginlowincome.htm [https://perma.cc/T9WP-ZBPT]. The total size of the credit generally equals the present value of either 70% of constructions costs or 30% of rehabilitation costs. I.R.C. § 42(b). However, developers earn a 30% larger credit when they locate projects in qualified census tracts (census tracts in which 50% or more of the households have an income below 60% of the area median gross income (AMGI) or where the poverty rate is at least 25%) or difficult development areas (high-cost, low-rent areas designated by HUD). I.R.C. § 42(d)(5)(B).

9. JOINT COMM. ON TAXATION, JCX-3-17, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2016-2020 (2017) (total reflects estimated cost of mortgage interest deduction ($63.6 billion), the deduction for qualified mortgage insurance premiums ($0.8 billion), the property tax deduction ($33.3 billion), and the exclusion of capital gains on sales of principal residences ($32.1 billion) for tax year 2017). Note that this estimate does not include the exclusion of imputed rental income, which delivers a substantial economic benefit to homeowners but is not reported in the JCT tax expenditure estimates. *Id.* at 5.

10. JOINT COMM. ON TAXATION, JCX-34-18, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2017-2021 (2018) (total reflects estimated cost of mortgage interest

Yet, little is known about how these tax-based housing subsidies may work together to undermine, rather than further, efforts to promote fair housing.[11] As this Article will show, the federal tax law discourages integration through the low-income housing tax credit program and rewards White-flight and economic segregation through the mortgage interest deduction. As a result, the tax law may exacerbate the enduring effects of past policies like redlining and exclusionary zoning, while also limiting the effectiveness of nontax federal programs intended to promote housing choice, such as the Section 8 tenant voucher program.

This Article has three major objectives. The first is descriptive—one cannot meaningfully analyze the relationship between tax-based housing subsidies and place of residence without first understanding where the subsidies are going. For this reason, I will begin by describing the spatial distribution of two major tax-based housing subsidies, the mortgage interest deduction and the low-income housing tax credit (LIHTC). In addition to reviewing what is known about the national distribution of these tax benefits, I have used publicly available data from the Internal Revenue Service (IRS) and HUD to map the flow of mortgage interest deduction and LIHTC benefits in Philadelphia. For reasons explained more fully below, Philadelphia is taken by myself and others to be representative of the Northeast, a region that stands to be most harmed by these tax laws due to the large amount of benefits that flow to the area and its continued struggle with urban segregation patterns.

The second objective is to explain how the mortgage interest deduction creates incentives to move to higher quality of life areas that tend to be less economically and racially diverse and how both tax laws tend to limit housing location choice for lower income populations. While it seems unlikely that these tax laws could cause residential segregation in a city with no preexisting segregation patterns, in cities that do struggle with residential segregation, tax-based housing subsidies may reinforce traditional segregation patterns, exacerbate harms caused by past and current nontax policies, and present barriers to integration. These effects are likely to be especially pronounced in regions like the Northeast that not only have preexisting segregation patterns but also receive a disproportionate amount of benefit from the mortgage interest deduction and struggle with LIHTC project clustering.

The third objective is to evaluate what these findings tell us about the course of tax-based housing policy. If tax-based housing subsidies currently reward segregation, as I will suggest, then they could also be reformed to do the opposite. The question of whether to use tax-based housing subsidies to affirmatively promote economic and racial integration is fundamentally normative, and my proposals will undoubtedly invite criticism from those who reject my view of what justice requires. Nevertheless, this Article will make a case for changing the spatial distribution of benefits to affirmatively promote integrated communities and will consider several reform options consistent with this approach.

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deduction ($40.7 billion) and the exclusion of capital gains on sales of principal residences ($34.4 billion) for tax year 2018).

11. HUD expressly declined to mandate in its AFFH regulation coordination with Treasury. Department of Housing and Urban Development: Affirmatively Furthering Fair Housing, Public Comment and Response, 80 Fed. Reg. 42,298 (July 16, 2015). The IRS, like all federal agencies, is subject to the duty to affirmatively further fair housing; however, no policy specifically requires the IRS or state housing agencies to promote integration.

This Article proceeds as follows. Part I will introduce the mortgage interest deduction and the LIHTC and review empirical studies about their spatial distribution nationwide. Part II will present maps showing the flow of subsidies in Philadelphia to illustrate how these tax benefits may flow to cities, and it will describe the neighborhoods that receive (and do not receive) these benefits. Part III uses thought experiments to demonstrate that the current distribution may not be an entirely passive result—tax-based housing subsidies have the potential to reinforce and exacerbate racial and economic segregation patterns by rewarding White-flight and limiting housing choices for low- and middle-income people. Part IV will argue that the benefits of the current spatial distribution of tax-based housing subsidies are too uncertain to outweigh the potential harm of reinforcing and exacerbating economic and racial segregation. Part V will recommend that the mortgage interest deduction be repealed and replaced with a credit and that states implement changes to their LIHTC allocation procedures to promote integrated communities. The Article will conclude with some closing thoughts and suggestions for further research.

I. THE SPATIAL DISTRIBUTION OF TAX-BASED HOUSING SUBSIDIES

A. Why the Spatial Distribution of Tax-Based Housing Subsidies Matters

Thirty years have passed since the LIHTC and the mortgage interest deduction emerged from the Tax Reform Act of 1986, marking a decisive shift to tax-based subsidies for affordable housing development and a renewed commitment to tax-subsidized home purchases.[12] By characterizing these tax provisions as tax-based housing subsidies, this Article accepts the premise of tax expenditure theory that such benefits are economically equivalent to, and could alternatively be administered as, direct expenditures.[13] Over the past three decades, these sizeable housing subsidies

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12. *See, e.g.*, Sagit Leviner, *Affordable Housing and the Role of the Low Income Housing Tax Credit Program: A Contemporary Assessment*, 57 TAX LAW. 869, 869 (2003); Dennis J. Ventry, Jr., *The Accidental Deduction: A History and Critique of the Tax Subsidy for Mortgage Interest*, 73 L. & CONTEMP. PROBS. 233, 236 (2010).

13. *See generally* Boris I. Bittker, *Accounting for Federal "Tax Subsidies" in the National Budget*, 22 NAT'L TAX J. 244 (1969) (arguing that the category of tax expenditures is vague, potentially encompasses far more provisions than tax expenditure theorists acknowledge, and would require a consensus as to what constitutes the comprehensive tax base); Mary L. Heen, *Reinventing Tax Expenditure Reform: Improving Program Oversight Under the Government Performance and Results Act*, 35 WAKE FOREST L. REV. 751, 778–91 (2000) (providing an account of the history of tax expenditures and challenges to the theory); Victor Thuronyi, *Tax Expenditures: A Reassessment*, 1988 DUKE L.J. 1155, 1156 (proposing an alternative approach to identifying tax expenditures based on substitution of tax provisions for programs that could be similarly accomplished through nontax laws). Tax expenditure theory was introduced by Stanley Surrey in the early 1970s to explain "special provisions of the federal income tax system which represent government expenditures made through that system to achieve various social and economic objectives." Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 706 (1970). Surrey hoped that, by demonstrating the economic equivalence of certain credits, deductions, exemptions, and exclusions to direct expenditures, he could convince policymakers to repeal tax expenditures and replace them with more effective

have flowed through the tax system, prompting significant commentary and analysis about their efficiency, incidence, and distributive effects.[14] Existing research generally studies the mortgage interest deduction or LIHTC as unrelated tax laws, but there is an important area of overlap that has not been fully explored in the literature: the interaction of their effects on place of residence.

Although the mortgage interest deduction is widely understood as a housing subsidy, it is not often discussed in terms of place of residence.[15] One possible reason is that the deduction is at least superficially place-neutral. Prior to the TCJA, the Internal Revenue Code § 163(h) allowed a deduction for the value of interest paid on the first $1 million of a household's acquisition mortgage debt (on a first or second home) and the first $100,000 of home equity debt.[16] Although the TCJA has scaled back the mortgage interest deduction,[17] the location of residence continues to have no impact on the size or availability of the deduction, except insofar as the populations that claim the deduction tend to live in certain place and not others. Middle- and upper-income taxpayers—and especially White taxpayers—are far more likely to benefit from the mortgage interest deduction than lower income taxpayers and minorities.[18]

In contrast, the LIHTC is not place-neutral.[19] As explained in Part III.B, the availability and size of the LIHTC varies by location due to a combination of federal tax

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direct subsidy programs. *See* Thuronyi, *supra*, at 1155. Surrey failed to instigate a wholesale repeal of tax expenditure programs, but his basic insight that tax expenditures "serve ends similar in nature to those served by direct government expenditure or loan programs" has helped shape the values of tax scholars and policymakers. *See* Surrey, *supra*, at 706. Meanwhile, there may be a number of advantages to administering these housing subsidies through the tax system. In the case of the mortgage interest deduction, homeowners—and especially the wealthy homeowners who claim the mortgage interest deduction—are in contact with the IRS each year during the tax filing process. As a result, the IRS already has procedures in place to collect or refund their taxes. By contrast, administering the program as a direct subsidy would at minimum require new procedures.

14. *See, e.g.*, Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329, 334 (2009); Daniel Hemel & Kyle Rozema, *Inequality and the Mortgage Interest Deduction*, 70 TAX L. REV. 667, 668–70 (2017); Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871, 885–900 (1993); Leviner, *supra* note 12, at 875–81; Ventry, *supra* note 12, at 252–54.

15. *But see* Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 ARIZ. ST. L.J. 1347 (2000) (discussing the environmental costs of suburban sprawl incentivized by the mortgage interest deduction).

16. I.R.C. § 163(h) (Westlaw through Pub. L. No. 115-140).

17. For debt incurred after December 15, 2017, home equity indebtedness interest is no longer allowed to be deducted and acquisition indebtedness interest deductions are capped at $750,000. I.R.C. § 163(h)(3)(F).

18. Brown, *supra* note 14, at 333. The primary reason why White taxpayers are more likely to benefit from the mortgage interest deduction is that the demographic of higher-income taxpayers who itemize tax deductions are disproportionately White. *See id.* at 361. However, White taxpayers may also be favored over non-White taxpayers of the same income level because Whites are disproportionately likely to be homeowners. *See id.* at 334–35.

19. Most investment subsidies are uniform regardless of geography. For example, tax incentives to invest in renewable energy projects are uniform regardless of location. *See* Michelle D. Layser, *Improving Tax Incentives for Wind Energy Production: The Case for a*

law and state administrative procedures.[20] Given the LIHTC program's history as a replacement for a failed federal public housing program blamed for exacerbating urban poverty,[21] the locational aspects of the LIHTC have been of great interest to those who research urban planning and poverty. Some have suggested that the LIHTC program actively contributes to economic and racial segregation, and, in fact, several states have begun to make changes to their allocation procedures to help mitigate

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Refundable Production Tax Credit, 81 MO. L. REV. 453, 455, 507 (2016).

20. To avoid subsidizing affordable housing development beyond budget goals, federal law limits the LIHTC in each state by a cap on total credit allocations. I.R.C. § 42(h)(3) (Westlaw through Pub. L. No. 115-140). Each state receives a limited amount of credits to allocate to eligible taxpayers, and in most cases the allocations are made pursuant to a competitive bidding process. I.R.C. § 43(h)(4). To participate in the competitive bidding process, affordable housing developers submit applications describing their proposed projects to their state housing agency, and the state housing agency then allocates the LIHTCs to eligible projects using priorities set forth in the state's qualified allocation plan. *See* J. William Callison, *Achieving Our Country: Geographic Desegregation and the Low-Income Housing Tax Credit*, 19 S. CAL. REV. L. & SOC. JUST. 213, 231–33 (2010).

21. In the 1980s, several high-profile examples of failed public housing projects had received national attention, including the Pruitt-Igoe project in St. Louis and the Cabrini-Green public housing projects in Chicago. *See* Colin Marshall, *Pruitt-Igoe: The Troubled High-Rise That Came To Define Urban America – A History of Cities in 50 Buildings, Day 21*, GUARDIAN (Apr. 22, 2015, 7:52 AM), https://www.theguardian.com/cities/2015/apr/22/pruitt-igoe-high-rise-urban-america-history-cities [https://perma.cc/35MD-9DK9]; Karen Hawkins, *Chicago Shutters Infamous Public Housing Complex*, NBC NEWS (Dec. 1, 2010), http://www.nbcnews.com/id/40450463/ns/us_news-life/t/chicago-shutters-infamous-public-housing-complex [https://perma.cc/XX2Q-G7WK]. Though some observers argued that critiques of public housing were exaggerated, contemporary news media described public housing as characterized "by poverty, crime, segregation, poor living conditions and communal despair" and claimed they were "almost universally viewed as failures that devour human lives and tax dollars." Stanley Ziemba, *How Projects Rose to Failure*, CHI. TRIBUNE (Dec. 2, 1986), http://articles.chicagotribune.com/1986-12-02/news/8603310330_1_chicago-housing-authority-high-rise-projects-public-housing [https://perma.cc/7JVP-2TML]; *see also* Charles E. Connerly, *What Should be Done with the Public Housing Program?*, 52 J. AM. PLAN. ASS'N 142 (1986). In response, the Reagan administration effectively ended federal programs in support of low-income rental housing by slashing the budget for the Section 8 tenant voucher program that had been introduced in the 1970s and by cutting the funding for new public housing projects. Robert Pear, *Reagan's Social Impact*, N.Y. TIMES (Aug. 25, 1982), http://www.nytimes.com/1982/08/25/us/reagan-s-social-impact-news-analysis.html [https://perma.cc/4T39-ZLR2]; Barry Zigas, Consumer Fed'n of Am., *Learning from the Low Income Housing Tax Credit: Building a New Social Investment Model*, COMM. DEV. INV. REV., Dec. 2013, at 43–55, http://www.frbsf.org/community-development/files/learning-low-income-housing-tax-credit-building-new-social-investment-model.pdf [https://perma.cc/QE5G-H6H9]. Thus, U.S. housing policy began to shift away from public housing and toward housing built and operated by private owners who relied on generous tax benefits. *Id.* Early drafts of the Tax Reform Act of 1986 eliminated the tax breaks associated with these tax shelters without offering any relief to investors, but a last-minute change to the bill introduced the LIHTC to mitigate the effect of repealing the tax breaks that had previously been available to investors in real estate projects. Gary Klott, *Housing Tax Benefit Put in Bill*, N.Y. TIMES (June 24, 1986), http://www.nytimes.com/1986/06/24/business/housing-tax-benefit-put-in-bill.html [https://perma.cc/L6AF-WHB8].

such effects.[22] However, a narrow focus on the LIHTC program risks overlooking the less obvious ways that the mortgage interest deduction also helps reinforce economic and racial segregation.

This Article will demonstrate that the well-known equity problems presented by both the mortgage interest deduction and the LIHTC may be even worse than we thought[23]: the inequities presented by the mortgage interest deduction compound inequities presented by the LIHTC program—and, together, the tax law may exacerbate nontax forces that sustain residential segregation patterns. Describing the spatial distribution of these tax-based housing subsidies is the first step in the project of understanding how tax laws affect neighborhood composition and residential mobility. The answers to these questions are essential to evaluate the numerous proposals and reforms in this context, ranging from calls to repeal the mortgage interest deduction to a recent wave of changes to states' LIHTC administrative procedures.

Though such reforms are often considered separately, many are supported by the same normative assumption: tax policies should not contribute to inequality in our society. In the years since the civil rights era, many African American families have experienced downward social mobility while White families have achieved upward social mobility.[24] One theory to explain this unsettling trajectory blames the effects

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22. *See infra* Part V.B.

23. Because tax-based housing subsidies target Americans at both extremes of the income scale, they immediately raise distributional questions. The mortgage interest deduction delivers a benefit to homeowners by subsidizing the cost of financing home purchases, but almost three-quarters of the benefits are claimed by taxpayers in the top two quintiles of the income scale. *See* CONG. BUDGET OFFICE, THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN THE INDIVIDUAL INCOME TAX SYSTEM (2013), https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/taxexpendituresone-column.pdf [https://perma.cc/FZ9U-TFC6]. On the low end of the income scale, the LIHTC program delivers an indirect benefit to low-income tenants who receive rent-controlled housing. I.R.C. § 42(c)(2) (Westlaw through Pub. L. No. 115-140). But in recent years, that program has delivered only $9 billion in subsidies annually (only part of which flows to low-income tenants themselves), not nearly enough to offset the distributional impact of the $72.4 billion that has been delivered each year to higher-income homeowners through the mortgage interest deduction. *See* JOINT COMM. ON TAXATION, JCX-3-17, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2016-2020, at 32 (2017). Although the TCJA has significantly scaled back the mortgage interest deduction, the tax break is still expected to deliver approximately $40.7 billion in subsidies to homeowners in 2018, an amount that far exceeds the $8.9 billion cost of the LIHTC. *See* JOINT COMM. ON TAXATION, JCX-34-18, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2017-2021, at 38-39 (2017). Note that LIHTC itself is claimed by owners of qualified low-income housing buildings during a ten-year compliance period. The size of the credit for any given year is determined by multiplying the adjusted basis of the eligible building by an "applicable percentage." I.R.C. § 42(a). The applicable percentage is defined as the percentage "which will yield over a 10-year period amounts of credit . . . which will have a present value equal to . . . 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year . . . ." I.R.C. § 42(b)(1). For non-federally subsidized new buildings equals at least 9% of the qualified basis of each qualified low-income building. I.R.C. § 42(b)(2). A qualified low-income housing building that is part of a project that meets one of two income-based tests described in the statute.

24. SHARKEY, *supra* note 1, at 100–01.

of neighborhoods where Black and White people live.[25] There is a strong sense in the literature that tax policies have also played a role in these outcomes.[26] The remainder of this Article will endeavor to explain how the tax law might reinforce or reward economic and racial segregation. The next section will begin this task by reviewing the evidence about the spatial distribution of mortgage interest deduction benefits and LIHTC properties.

B. The Location of Tax-Subsidized Housing in America

1. The Spatial Distribution of Mortgage Interest Deduction Benefits

Existing studies about the spatial distribution of tax-based housing subsidies have looked at the flow of benefits from the mortgage interest deduction or the location of LIHTC properties, but they have not yet brought those findings together to paint a comprehensive picture. Viewed together, these studies describe tax-based housing subsidies targeted to distinct populations that not only occupy different socioeconomic and racial demographics but also live in neighborhoods and communities that rarely overlap geographically. For the purpose of understanding how the mortgage interest deduction and LIHTC can affect segregation patterns, city-level analyses are more useful than cross-state and cross-city analyses. Nevertheless, an analysis of the nationwide spatial distribution of tax-based housing subsidies helps shed light on what areas may be most vulnerable to their effects.

The most comprehensive nation-level studies of the spatial distribution of the mortgage interest deduction began with the observation that the mortgage interest deduction, together with the state property tax deduction, "comes at a significant cost" that is well documented at the national level, but that the value of the subsidies "varies dramatically over space."[27] In other words, the spatial distribution of the

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25. *Id.* at 5–7. Sharkey distinguishes among geographic mobility, residential mobility, and contextual mobility and emphasizes contextual mobility for the purpose of his study. By contextual mobility, Sharkey refers to neighborhood types and focuses on whether people move from one type of neighborhood (e.g., a low-quality neighborhood) to another (e.g., a high-quality neighborhood). If people tend to move to neighborhoods of similar types, then there is minimal contextual mobility in Sharkey's analysis. This Article refers simply to residential mobility and focuses on how the tax law may affect neighborhood options or impact neighborhood composition.

26. *See, e.g.*, LANCE FREEMAN, BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, SITING AFFORDABLE HOUSING: LOCATION AND NEIGHBORHOOD TRENDS OF LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS IN THE 1990S (2004); Casey Dawkins, *The Spatial Pattern of Low Income Housing Tax Credit Properties: Implications for Fair Housing and Poverty Deconcentration Policies*, 79 J. AM. PLAN. ASS'N. 222, 222 (2013); Mann, *supra* note 15, at 1358.

27. Todd Sinai & Joseph Gyourko, *(Un)Changing Geographical Distribution of Housing Tax Benefits: 1980-2000,* 18 TAX POL'Y ECON. 175, 176 (2004); *see also* Joseph Gyourko & Todd Sinai, *The Spatial Distribution of Housing-Related Ordinary Income Tax Benefits*, 31 REAL EST. ECON. 527 (2003).

mortgage interest deduction implies a redistribution of value from foregone tax revenue—a cost borne in varying degrees by taxpayers nationwide—in order to disproportionately benefit taxpayers in a limited number of locations.[28]

Most of those states are located in the Northeast or West Coast, indicating that those regions receive a disproportionate share of mortgage interest deduction benefits nationally.[29] Homeowners in Hawaii, District of Columbia, California, Connecticut, New York, and Massachusetts received greater subsidies than homeowners in other states. Meanwhile, most of the states where homeowners received the least benefit from tax-based housing subsidies are located in the South and Midwest.[30] These results suggest that the impact of the mortgage interest deduction will be felt more in the Northeast and West Coast, and it will have the least impact on the South and Midwest regions.

The spatial distribution also varies dramatically across and within cities.[31] Again, gross benefits disproportionately flow to metropolitan areas located in the Northeast

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28. Another way to think about this redistributive effect is that, in lieu of the $84 billion tax expenditure that benefits a subset of the population, the government could instead distribute that same $84 billion across the population. Perhaps the $84 billion would be distributed as an equal lump sum to every taxpayer, or maybe each taxpayers' payout would be adjusted up or down in accordance with his or her marginal tax rate. In either case, the foregone distribution under the real-life scenario (where the $84 billion is instead dedicated to the mortgage interest deduction program) can be conceptualized as the program cost borne by every taxpayer. Conceptualized in this way, the value a homeowner receives from the mortgage interest deduction is offset by his or her share of the overall program costs. For this reason, the researchers calculated the value of benefits net of program costs under certain assumptions. Gyourko & Sinai, *supra* note 27, at 528. Under the simplest assumption, every household was assumed to "pay" the same $2092 lump sum to finance the program. *Id.* They noted that under that assumption, the distribution of net benefits from the mortgage interest deduction and state property tax deduction ranged from negative $1175 per owned unit in South Dakota to $8626 in Hawaii. *Id.* at 529. Under an alternative assumption, homeowner households' contribution to the program cost was adjusted to take into account progressive marginal tax rates, whereby higher-income taxpayers bore a larger share of program costs and received greater value from the subsidies. By bringing taxpaying households' costs and benefits into proportion, this assumption helped minimize the effect of progressivity on the spatial analysis. Under that assumption, net benefits ranged from negative $253 per owner in Indiana to $7035 per owner in Hawaii; the value in South Dakota was negative $27. *Id.* at 529, 542–43. Moreover, under that assumption homeowners in forty-one states and the District of Columbia received positive net benefits from the program, while homeowners in the remaining states received no net benefit from the program. *Id.* at 542–43.

29. Sinai & Gyourko, *supra* note 27, at 204.

30. Gyourko & Sinai, *supra* note 27, at 542–43 tbl.2. Under the lump sum assumption, the five states receiving the least benefits were South Dakota, North Dakota, West Virginia, Mississippi, Wyoming, and Oklahoma. *Id.* Under the proportional assumption, homeowners in the following nine states received negative net benefit from the program: Indiana, Kansas, West Virginia, Iowa, Oklahoma, Alabama, Mississippi, South Dakota, and Nebraska. *Id.*

31. *Id.* at 529. The Gyourko and Sinai study has some limitations. The study was published over a decade before the IRS began publishing mortgage interest deduction tax return data broken down by zip code. For this reason, their studies relied on a series of estimates and assumptions inferred from 1990 census-tract data. Among the limitations of their data was the inability to determine which homeowners itemized their tax returns (in order to actually claim

and West Coast.[32] Within many large cities, the distribution of mortgage interest deduction benefits disproportionately flows to a small portion of the population.[33] For example, in Atlanta, Chicago, Dallas, Houston, and Philadelphia, as much as 70% of benefits flow to 25% of the owners in the area.[34] This effect is most common in coastal areas and highly populated cities.[35]

Finally, Philadelphia has been used as a case study to help illustrate the intracity distribution of tax-based housing subsidies. The researchers noted that 84% of the region's $2.7 billion estimated tax benefits accrued to suburban homeowners.[36] Within Philadelphia, the top five percent of census tracts "received roughly the same amount of aggregate benefit as the bottom 60 percent," suggesting that the distribution of tax-based housing subsidies in the city was highly concentrated.[37] These patterns were consistent with what has been observed elsewhere in the Northeast, a region that may be especially vulnerable to harms caused by the mortgage interest deduction due to the disproportionate amount of benefits flowing to the area. As such, this case study and the other studies reviewed in this section supported the choice to use Philadelphia as an illustrative case to study the mortgage interest deduction for

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the deduction) or to say with certainty what marginal tax rate should be applied. *Id.* In a subsequent study, the same researchers applied a similar approach to estimate the change in spatial distribution over time by comparing data from the 1980, 1990, and 2000 censuses. *See generally* Sinai & Gyourko, *supra* note 27. They found that although marginal tax rates had changed over time, the spatial targeting of the subsidies remained relatively consistent and heavily concentrated in California and the Boston-New York corridor. *Id.* at 176. The disparity in value between those high-benefit areas and lower-benefit areas had expanded over time, however, and they attributed that result to high and rising housing prices. *Id.*

32. Gyourko & Sinai, *supra* note 27, at 529 (explaining that benefits disproportionately flowed to the Los Angeles-Riverside-Orange County, New York-Northern New Jersey, and San Francisco-Oakland-San Jose areas). The most per-owner gross benefits were received by homeowners in the New York-Northern Jersey Combined Metropolitan Statistical Area (MSA), and the least were received by non-MSA parts of Texas. *Id.* at 546–48. Out of 312 MSAs in the study, homeowners in only 30 MSAs receive gross benefits in excess of the mean for the nation. *Id.*

33. *Id.* at 551 ("[I]n some metropolitan areas, the distribution of gross housing subsidy flow is fairly uniform, while in others, including many of the largest cities, a small portion of the population captures the bulk of the tax benefits.").

34. *Id.* at 552.

35. *Id.*

36. JOSEPH GYOURKO & TODD SINAI, BROOKINGS INST. ON URBAN & METRO. POLICY, THE SPATIAL DISTRIBUTION OF HOUSING-RELATED TAX BENEFITS IN THE UNITED STATES 15 (2001), https://www.brookings.edu/wp-content/uploads/2016/06/gyourko.pdf [https://perma.cc/28MD-4NGQ].

37. *Id.* at 17. When the program costs borne by homeowners and renters in Philadelphia are taken into account, the city had a sizeable negative net benefit under their analysis. In the aggregate, Philadelphia households (owners and renters) were estimated to "pay nearly $650 million more in program costs than they receive in tax benefits." *Id.* at 16. They note that homeownership rates probably do not account for these results, as "[t]ax benefit values in Philadelphia tend to be relatively low even though the home ownership rate is high compared to many other large central cities." *Id.*

this Article. As set forth in Part II below, my own calculations are generally consistent with the findings of the studies described in this section.[38]

2. The Spatial Distribution of Low-Income Housing Tax Credit Projects

The spatial distribution of LIHTC properties is almost a mirror-image of the distribution of tax-based subsidies for owner-occupied housing. A HUD report on LIHTC projects placed in service by 2006 noted that the highest percentage of LIHTC properties were in the South (33.5%), followed by the Midwest (27.6%), West (20.3%), and Northeast (18.7%).[39] Of those projects, 44.9% were located in central cities, 37% were suburban, and 13.1% were non-metro.[40] One study found that, on the national level only about 8.5% to 12.2% of the nation's LIHTC properties were placed in high-poverty census tracts (with poverty rates of at least 40%), while about one-third were sited in low-poverty census tracts (with poverty rates of less than 10%).[41]

However, the distribution of LIHTC units reveals large disparities between urban and non-urban locations, especially in the Northeast, where 61.2% of LIHTC units are in central cities.[42] Within many cities, and especially in the Northeast and Midwest, LIHTC properties are often located in high-poverty areas.[43] Moreover, LIHTC properties in many cities—especially in the Northeast—are not only located in high-poverty areas, but they are also clustered.[44] In New York City, for example, the "typical" LIHTC property was located in a neighborhood with almost the exact same poverty rate as the typical neighborhood inhabited by low-income residents in the city, indicating that the LIHTC properties have been targeted to poor neighborhoods in that city.[45]

New York is not an exception; the researchers identified forty metropolitan cities where the majority of LIHTC properties were located in tracts with poverty rates of

38. *See infra* Part II.A (estimating that 88.25% of Philadelphia-region mortgage interest deduction benefits flowed to the suburbs and the top 20% of the city's zip codes captured 44% of the city's mortgage interest deduction value (as compared to the 29% of value captured by the bottom 60% of zip codes)).

39. ABT ASSOCS. INC., UPDATING THE LOW-INCOME HOUSING TAX CREDIT (LIHTC) DATABASE: PROJECTS PLACED IN SERVICE THROUGH 2006, at 38 (2009), http://www.huduser.gov/portal/datasets/lihtc/report9506.pdf [https://perma.cc/UE23-FP5U] (prepared for the U.S. Dep't of Housing and Urban Dev.).

40. *Id.* at 43. The researchers noted that this distribution is similar to the distribution of occupied housing stock generally. *Id.*

41. Ingrid Gould Ellen, Katherine M. O'Regan & Ioan Voicu, *Siting, Spillovers, and Segregation: A Reexamination of the Low-Income Housing Tax Credit Program*, *in* HOUSING MARKETS AND THE ECONOMY: RISK, REGULATION, AND POLICY 233, 242 (Edward L. Glaeser & John M. Quigley eds., 2009).

42. ABT ASSOCS. INC., *supra* note 39, at 43.

43. Ellen et al., *supra* note 41, at 243; Dawkins, *supra* note 26, at 231.

44. Dawkins, *supra* note 26, at 231. One study looked at the distribution of LIHTC properties in ten metropolitan areas and noted that in seven of the ten cities studied, the properties were more clustered than expected. *Id.*

45. Ellen et al., *supra* note 41, at 244.

thirty percent or more.[46] Other researchers have noted further that "LIHTC units are still more likely than other rental units to be located in minority neighborhoods," pointing to HUD data from 2005 that showed "nearly 43% of all LIHTC units are in neighborhoods with over 50% minority populations," a number that "increases to 60% for LIHTC units located in central cities."[47] Part III will analyze features of LIHTC design that may help explain why LIHTC properties in many cities—and especially Northeastern cities—tend to be located and clustered in segregated areas.

In sum, the existing locational research on tax-based housing subsidies reflects a spatial distribution of benefits in which the neighborhoods that receive the most value from the mortgage interest deduction tend not to overlap with areas with LIHTC properties, especially in metropolitan areas. Lest the full impact of this statement be lost in the statistics, the next part will present visualizations of the spatial distribution of LIHTC properties and mortgage interest deduction benefits in and around the city of Philadelphia. Though others have mapped LIHTC properties or mortgage interest deductions separately, the maps presented here are innovative in that they overlay the data to present a more comprehensive visualization of the flow of these tax-based housing subsidies.

II. VISUALIZING THE SPATIAL DISTRIBUTION OF TAX-BASED HOUSING SUBSIDIES

A. The Big Picture: Mapping Tax-Based Housing Subsidies

The empirical evidence reviewed in Part I is telling; however, the story can be told even more powerfully through visuals that illustrate the spatial distribution of these two tax-based housing subsidies and provide the basis for a closer look at the neighborhoods where the benefits flow. This section will present visualizations I created using the mapping program ArcGIS. Other researchers have also mapped the location of LIHTC properties in Philadelphia;[48] however, I chose to layer those points over a heat map showing the flow of the mortgage interest deduction. First, I created a heat map of Philadelphia using IRS data about mortgage interest deduction claims in 2014, the most recently available data.[49] Then, I layered the

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46. *Id.* at 244 n.26; Deirdre Oakley, *Locational Patterns of Low-Income Housing Tax Credit Developments: A Sociospatial Analysis of Four Metropolitan Areas*, 43 URB. AFF. REV. 599, 605–06 (2008) (reviewing the literature and observing that research supports the existence of similar patterns in Austin, Cincinnati, Miami, St. Louis, Chicago, Seattle, Cleveland, Baltimore, and Washington D.C.).

47. Callison, *supra* note 20, at 245.

48. *See, e.g.*, Benjamin Field, Why Low-Income Housing Tax Credits Are Flowing to Gentrifying Neighborhoods (May 13, 2016) (unpublished manuscript), https://papers.ssrn.com/abstract=2778182 [https://perma.cc/886G-UJPY].

49. The IRS publicly releases data about the amount of mortgage interest claimed by taxpayers in certain income ranges. However, the income ranges provided by the IRS sometimes span multiple tax brackets. Since the value of a deduction is determined by multiplying the size of a deduction by the taxpayer's marginal tax rate, this limitation makes it impossible to calculate the exact value of mortgage interest deduction benefits. It is also impossible to tell

locations of LIHTC properties provided by HUD over the heat map.[50] The benefits are twofold. First, the maps shed light on where tax-based housing subsidies are going—and what neighborhoods stand to benefit or lose if the law is reformed. Second, the maps reveal real, physical distance and segregation between the populations targeted for these subsidies.

Other researchers have focused on Philadelphia when studying the mortgage interest deduction or LIHTC properties, and there is good reason to think that Philadelphia is a relatively typical case within the Northeast.[51] Northeastern and West Coast cities are more likely than cities in other regions to have a history of segregation that is still visible in the residential patterns,[52] so policies that further exacerbate the traditional segregation patterns or present barriers to integration are particularly troublesome in this context. Yet, Northeastern cities are also most likely to have clusters of LIHTC properties in very low-income urban locations[53] and to receive more value from the mortgage interest deduction than much of the county.[54] For these reasons, any problems with tax-based housing subsidies are likely to be especially pronounced in this region. As such, Philadelphia serves as a particularly apt case for demonstrating the potential dangers presented by the mortgage interest deduction and LIHTC program.

The map in Figure 1 below displays the estimated gross benefit from mortgage interest deduction benefits received by each zip code in Philadelphia, Pennsylvania, and seven surrounding counties in 2014 (with the darkest areas receiving the most value): Bucks, Burlington, Camden, Chester, Delaware, Gloucester, and Montgomery. The locations of LIHTC properties (new construction and rehabilitation projects) are overlaid as white dots, helping to illustrate and bring together the empirical observations made in the studies described above.

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from the data whether the taxpayers that claimed the mortgage interest deduction filed as individuals, joint filers, or otherwise. Finally, it is impossible to tell from the data what other deductions a taxpayer may have claimed to further lower its marginal tax rate. For these reasons, I estimated the value of benefits by assuming the lowest marginal tax rate covered by the income range provided by the IRS. Because these estimates are conservative, it is likely that some zip codes received more value from the mortgage interest deduction than I estimated.

50. The HUD data contains one address per project, which may fail to fully capture some scattered site projects; therefore, it is likely that at least some smaller LIHTC properties are not depicted on these maps.

51. The conclusions by Gyourko and Sinai (in a Philadelphia case study of mortgage interest deduction benefits) and by Field (in a Philadelphia case study of LIHTC properties) were generally consistent with more general research. *See, e.g.*, Ellen et al., *supra* note 41; Field, *supra* note 48, at 243–44; Gyourko & Sinai, *supra* note 27.

52. Kevin D. Williamson, *Shocked by Segregation*, NAT'L REV. (Aug. 24, 2016), http://www.nationalreview.com/article/439291/economic-segregation-greatest-democrat-controlled-cities [https://perma.cc/DEC9-KBAV].

53. *See supra* Part I.B.2.

54. *See supra* Part I.B.1.

Key	Quintile	Estimated Total MID Value Received by Zip Code (2014)
	1	$45,500 – $969,710
	2	$969,710.01 – $2,458,430
	3	$2,458,430.01– $4,487,990
	4	$4,487,990.01 – $8,610,130
	5	**$8,610,130.01 – $23,845,260**

Figure 1. Philadelphia Metro Region Mortgage Interest Deduction Benefits and LIHTC Project Locations

The map in Figure 1 reflects distributions of benefits that are as different in physical location as they are with respect to the populations they target. In 2014, about 29% of the area's population resided in the city of Philadelphia, which was about 41.6% White[55] and had a home ownership rate of about 52.9%;[56] however, the city of Philadelphia received only about 11.75% of the area's mortgage interest deduction value and was the site of 65.86% of the area's LIHTC properties.[57] The remaining

55. *American FactFinder Community Facts*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml [https://perma.cc/86CF-ZJ2U] (search Philadelphia city, Pennsylvania > Demographic and Housing Estimates > 2014).

56. *Id.* (search Philadelphia city, Pennsylvania > Housing > American Community Survey Selected Housing Characteristics > 2014).

57. Gyourko and Sinai had estimated that about 16% of mortgage interest deduction benefits flow to Philadelphia city. GYOURKO & SINAI, *supra* note 36, at 15. Methodological differences probably contribute to the disparity. Sinai and Gyourko relied on estimates inferred from home prices and income demographics because actual IRS claimant data was unavailable at the time of the study. This Article instead uses actual IRS claimant data from 2014 to estimate the value of the deduction. Similarly, with respect to the LIHTC data, different results

88.25% of mortgage interest deduction benefits flowed to the surrounding counties, and especially to Chester County, Bucks County and Montgomery County. In fact, almost a quarter (24.86%) of all mortgage interest deduction value flowed to just 20 of the 318 zip codes studied, 14 of which are in Chester, Bucks or Montgomery county (and none are in the city of Philadelphia).

County	Population (% Area)	MID Value (% Area)	LIHTC properties (Number, % Area)	Poverty Rate	Percent White
Philadelphia	28.76%	11.75%	465 (65.86%)	25.8%	45.1%
Bucks	11.83%	16.44%	13 (1.84%)	6.6%	89.2%
Burlington	8.49%	10.27%	16 (2.27%)	7.2%	74%
Camden*	9.63%	8.26%	61 (8.64%)	13%	79.8%
Chester	9.73%	16.38%	43 (6.09%)	7.3%	86.4%
Delaware	10.63%	11.21%	63 (8.92%)	11%	70.6%
Gloucester	5.49%	5.72%	18 (2.55%)	8.2%	83.6%
Montgomery	15.44%	19.97%	27 (3.82%)	7.10%	80.6%

Table 1. Philadelphia Metro Region Mortgage Interest Deduction Benefits and LIHTC Project Locations

Within the city of Philadelphia, the value of mortgage interest deduction benefits received by a zip code generally relates inversely to the number of LIHTC properties located in that zip code. As displayed in Figure 2 below, 70% of the value of mortgage interest deduction benefits are distributed to the top two quintiles of Philadelphia zip codes, while only 19% of LIHTC properties are built in those areas.[58] In many instances, therefore, the distribution of tax-based subsidies in the Philadelphia region reflects not only physical distance between those who live in suburbs and urban centers, but also between those who live within the city itself.

may be possible if LIHTC units are counted instead of LIHTC properties. For example, my own analysis of HUD's data showed that only 47.42% of the area's LIHTC-financed units are located in the city (as compared to the 65.86% of LIHTC properties noted here). While this may suggest that housing projects in the suburbs are larger and boast a greater number of low-income units, the HUD data about unit characteristics is incomplete and that estimate may be inaccurate. Another possible source of inaccuracy is the effect of scattered site projects, in which multiple properties are built as part of a single project. The HUD data records only one address per project, so scattered site projects could alter the results.

58. To create Figure 2, I sorted zip codes by the estimated mortgage interest deduction value and divided into quintiles. The first quintile consists of the one-fifth of zip codes that received the lowest estimated value from the mortgage interest deduction. Those zip codes collectively received only 3% of Philadelphia's mortgage interest deduction benefits but were the location of 35% of the city's LIHTC properties. The fifth quintile consists of the one-fifth of zip codes that received the highest estimated value from the mortgage interest deduction. That quintile received 44% of the city's mortgage interest deduction benefits and was the location of 14% of the city's LIHTC properties. Source data on file with Author.

Over 60% of the city's LIHTC properties are clustered in ten of the city's forty-seven zip codes, and eight of those ten zip codes are in the bottom-three quintiles for receiving mortgage interest deduction benefits. Figure 3 displays a scatterplot of every Philadelphia zip code showing the relationship between the number of LIHTC properties in a zip code versus the estimated amount of mortgage interest deduction value received by all taxpayers in the zip code.

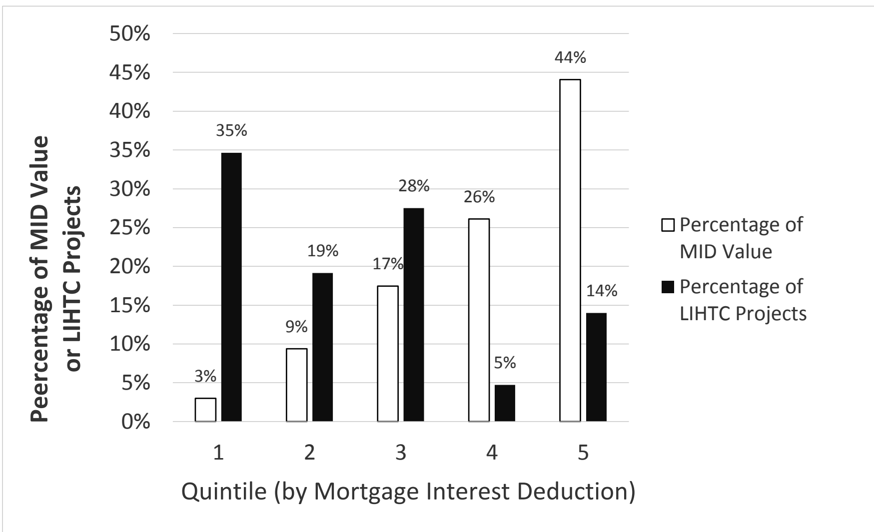

Figure 2. Percentage of MID Benefits and LIHTC Projects by Quintile of Philadelphia Zip Codes

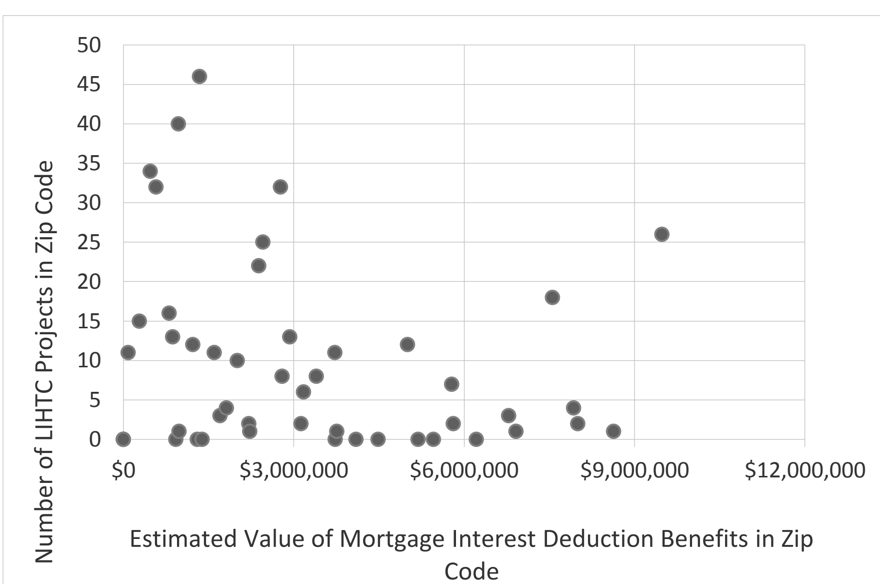

Figure 3. LIHTC Projects and Mortgage Interest Deduction Benefits by Philadelphia Zip Code

The map in Figure 4 below displays the estimated value of mortgage interest deduction benefits in Philadelphia as a heat map (with the darker areas receiving the most value) and the location of LIHTC properties (new construction and rehabilitation projects) overlaid to show the disparity.[59]

Key	Quintile	Estimated Total MID Value Received by Zip Code (2014)
	1	$86,950 – $1,223,600
	2	$1,223,600.01 – $2,225,500
	3	$2,225,500.01– $3,723,160
	4	$3,723,160.01 – $5,809,240
	5	$5,809,240.01 – $11,666,710

Figure 4. Philadelphia City Mortgage Interest Deduction Benefits and LIHTC Project Locations

59. For more on the mapping methodology, see *supra* notes 49–50 and accompanying text.

A few immediate observations can be made. First, most LIHTC properties appear in zip codes that are lightly shaded, indicating that they are the areas in the city estimated to receive the least aggregate value from the mortgage interest deduction. Second, with some exceptions, the LIHTC properties are generally located in the centermost parts of the city—the "inner city"—while most of the city's mortgage interest deduction benefits flow to the far west and northern parts of the city that border Montgomery, Bucks, and Burlington counties. Third, as discussed in greater detail below, there are some notable exceptions to these patterns, especially in the South Philadelphia neighborhoods just south of Center City.

The main benefit of mapping the flow of tax-based housing subsidies is that the exercise reveals the location of taxpayers who claim the mortgage interest deduction or who live in LIHTC properties. When neighborhoods have been described in the literature about tax-based housing subsidies, the descriptions have most often appeared in the context of the LIHTC. These studies have noted that the neighborhoods where LIHTC properties are located often have higher than average poverty rates, high Black or Hispanic racial composition, and lower quality schools.[60] Part II.A builds upon those studies by describing not only areas that boast the most LIHTC properties but also those that receive high proportions of mortgage interest deduction benefits or feature a mix of both types of subsidies. The subpart will begin with a brief description of the suburbs and the Philadelphia neighborhoods that claim the most value from the mortgage interest deduction. Then, I will briefly describe the inner-city neighborhoods with the most LIHTC properties, including some where LIHTC tenants and mortgage interest deduction claimants live in close proximity.

B. A Closer Look: Describing Tax-Subsidized Neighborhoods

1. Neighborhoods with High Shares of Mortgage Interest Deduction Benefits and Few LIHTC Properties

Due to the significant variations of distributions across regions, states, and metropolitan areas—not to mention the plethora of nontax legal, economic, and cultural differences among places—it is difficult to know with certainty how representative any given example might be. Nevertheless, neighborhood characteristics are pertinent to the evaluation of tax-based housing subsidies in terms of efficacy and

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60. FREEMAN, *supra* note 26, at 6–9; Deng, *supra* note 5, at 33; Oakley, *supra* note 46, at 600. However, in a study of the relationship between the LIHTC program and neighborhood disadvantage, sociologist Diedre Oakley tested whether those and other neighborhood characteristics—income, unemployment rate, racial composition, poverty rate—were predictive of the existence of LIHTC properties. Oakley, *supra* note 46, at 624. Oakley concluded that, for the most part, they were not statistically significant predictors of the presence of LIHTC developments. *Id.* In contrast, Oakley noted that the most predictive factor was the presence of qualified census tracts, suggesting "that a major contributing factor is the provision of the [qualified census tract] bonus, an integral policy component of the LIHTC program. Thus, a provision of the program designed to encourage private developers to provide affordable housing in the more disadvantaged neighborhoods has to some extent mitigated the secondary goal of providing more economic diversity in LIHTC neighborhoods." *Id.*

justice, and the descriptions that follow serve to expand our understanding of the places that receive tax-based housing subsidies.

Take, for example, zip code 19335, which lies within the Philadelphia suburb Chester County. According to my analysis, the zip code was in the top quintile of zip codes that received value from the mortgage interest deduction in 2014. The area was overwhelmingly White and educated, with over half the adult population over age 25 having completed at least some college.[61] The median household income was $89,984.[62] The schools are among the best in the region. For example, schools in Downingtown, Pennsylvania, which is located within the zip code, are ranked 24 out of 101 schools in the Philadelphia area.[63] The elementary school student body is predominantly White,[64] and relatively few of the students have been identified as economically disadvantaged.[65] One blog ranked Downingtown among the "best places for families to live in Pennsylvania."[66] In short, Downingtown is a high quality-of-life, middle- and upper-income, mostly White suburban city where residents experience little place-based disadvantage. There are no LIHTC properties in Downingtown or the rest of zip code 19335.

Within Philadelphia, a relatively consistent story can be told about the places and people who receive the greatest benefit from the mortgage interest deduction: the communities are whiter, more affluent, and safer than the city's average, and

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61. *American FactFinder Community Facts*, *supra* note 55 (search 19335 > Population > 2016 American Community Survey > Demographic and Housing Estimates > 2014) (reporting that 85.7% of single race households are White); *Id.* (search 19335 > Education > 2016 American Community Survey > Educational Attainment > 2014) (reporting that 71.8% of the population over age 25 had achieved some college (14.8%), an associate's degree (6.9%), a bachelor's degree (32.1%) or a graduate or professional degree (18%)). Similarly, in zip code 19382, which under my analysis received the most mortgage interest deduction value in the region, 88.4% of the population was White., *Id.* (search 19382 > Population > 2016 American Community Survey > Demographic and Housing Estimates > 2014) (reporting that 88.4% of single race households was White). Also in zip code 19382, of adults ages 18 to 24, 94.1% had achieved high school graduation or higher, and of adults over age 25, 95.4% had achieved high school graduation or higher. *Id.* (search 19382 > Education > 2016 American Community Survey > Educational Attainment > 2014).

62. *Id.* (search 19335 > Income > Selected Economic Characteristics > 2014).

63. *Downingtown Area School District Rankings*, NICHE, https://k12.niche.com/d/downingtown-area-school-district-pa/rankings [https://perma.cc/UFU8-3TAB] (ranking the Downingtown Area School District #24 of 101 schools in the Philadelphia metro region).

64. *Downington Area SD*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/135 [https://perma.cc/WC8Z-8VQU] (as of 2018, 77.01% of students are White; 3.18% are Black; 4.73% are Hispanic).

65. *Id.* (identifying 10.31% of the students as economically disadvantaged as of 2018).

66. Richie Bernardo, *2016's Best Places for Families To Live in Pennsylvania*, WALLET HUB (Feb. 24, 2016), https://wallethub.com/edu/best-places-to-live-in-pennsylvania/19252 [https://perma.cc/4AWQ-NDQW].

though the neighborhoods are within the city limits, many "feel" suburban.[67] Adults in these communities are highly educated, and they take no chances on the education of their children, many of whom evidentially attend private schools.[68] The public elementary schools in these communities often have mixed-race demographics, making them more integrated than either the featured schools in the suburbs (which are mostly White) or the featured schools in the inner city (which are mostly Black and Hispanic).[69] To the extent that integrated schools are important for promoting equal educational opportunities for minority youth, the schools in these areas may be better than many in the region. But again, these are not the areas where LIHTC properties are located.[70]

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67. *See, e.g.*, Andorra, PLANPHILLY, http://planphilly.com/neighborhoods/Andorra [https://perma.cc/T6WW-GNL2] (describing one of the neighborhoods in the zip code receiving the highest amount of mortgage interest deduction benefits as a neighborhood that "resembles suburban Montgomery County more than Philadelphia city neighborhoods").

68. For example, elementary-aged children in Roxborough (a neighborhood in zip code 19128, which receives a high proportion of mortgage interest deduction benefits) are zoned for Shawmont Elementary School, which is 42.72% White and 38.89% Black despite the neighborhood demographics, suggesting that many White families in the area send their children to private schools. *Shawmont Sch*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6930 [https://perma.cc/QR7C-L5T5]; *What Do You Think About Buying of Roxborough? (Philadelphia: Short Sales, Real Estate Market)*, CITY-DATA.COM (July 21, 2008), http://www.city-data.com/forum/philadelphia/385399-what-do-you-think-about-buying.html [https://perma.cc/KL6W-XU8J].

69. *See Shawmont Sch*, *supra* note 68. Similarly, students in zip codes 19115 and 19154 (which also receive a high proportion of mortgage interest deduction benefits) are zoned for Stephen Decatur School (58.2% White, 16.29% Black as of 2018), Aloysius L. Fitzpatrick School (54.06% White, 18.46% Black), Anne Frank School (40.02% White, 15.76% Black as of 2018), and Joseph Greenberg School (49.6% White, 14.32% Black as of 2018). PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org [https://perma.cc/BRQ8-F4HL]. In 2018, the population of those zip codes are 78.4% and 85.8% White, respectively. *American FactFinder Community Facts*, *supra* note 55 (search 19115 > Population > 2016 American Community Survey > Demographic and Housing Estimates > 2014) (reporting that 78.4% of single race households was White); *Id.* (search 19154 > Population > 2016 American Community Survey > Demographic and Housing Estimates > 2014) (reporting that 85.8% of single race households was White). These zip codes are zoned for George Washington High school, which is 41.01% White, 28.31% Black, and 11.59% Hispanic. *Washington George HS*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6958 [https://perma.cc/L6WP-9WBJ].

70. For example, the Fox Chase/Burhome neighborhoods only have two LIHTC properties, both of which are reserved for seniors. *See* HUD, *Center Park Ii*, RENTALHOUSINGDEALS, http://www.rentalhousingdeals.com/PA/PHILADELPHIA/CENTER-PARK-II [https://perma.cc/H3NR-7H25] (profile of Center Park II affordable housing project in Burholme); Press Release, Inglis, Inglis & Medical Mission Sisters Partner on Affordable Housing: 61 Units Planned for Mobility-Impaired and Low Income Retirees (June 14, 2013), https://www.inglis.org/images/uploads/general/2013-06-14_MissionGreen_Combined_Release.pdf [https://perma.cc/SQZ2-FQYN] (press release announcing plans for Mission Green affordable senior housing project in Fox Chase).

2. Neighborhoods with High Numbers of LIHTC Properties and Little Mortgage Interest Deduction Benefit

The highest concentrations of LIHTC properties are found in West Philadelphia and Lower North Philadelphia, each of which contain multiple discrete neighborhoods,[71] most of which are situated within the lowest quintile of Philadelphia zip codes receiving mortgage interest deduction benefits. And most are predominantly minority neighborhoods with low-quality schools and higher than average crime rates. According to on my own analysis, just two West Philadelphia zip codes —19104 and 19139—are the site of 86 (18%) of the city's LIHTC properties and the recipient of just 1.39% of the city's estimated mortgage interest deduction benefits.[72] While there is no way, in the limited space available for this Article, to look at all the neighborhoods in these or similar zip codes in detail, a description of a couple will suffice for illustration.

Just northwest of University City, the home of University of Pennsylvania and Drexel University campuses, are several neighborhoods with a high concentration of LIHTC properties. One of those neighborhoods is Mantua, a neighborhood set apart from the rest of West Philadelphia by bridges.[73] More than half of Mantua residents—and 96% of children under five—live below the poverty line, and the neighborhood is the location of ten LIHTC properties.[74] Elementary-age children in Mantua attend Morton McMichael School, the student body of which is 92.29% Black and 77% economically disadvantaged.[75] The elementary school has been designated by the state as "low-achieving" based on state standardized test scores.[76]

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71. The West Philadelphia neighborhoods with the most LIHTC properties include Mantua, Belmont, West Powelton, Haverford North, and East Parkside—all of which share a zip code (zip code 19104) with University City where the University of Pennsylvania is located—as well as Walnut Hill (zip code 19139), Dunlap (zip code 19139), Haddington (zip code 19131), Carroll Park (zip code 19131), and Cobbs Creek (zip code 19139). *See supra* Fig. 4; *see also infra* text accompanying note 72. While LIHTC properties are scattered throughout North Philadelphia, high concentrations can also be found in Strawberry Mansion, North Central, Stanton, and Hartrantf.

72. Data on file with author.

73. Kate Kilpatrick, *In Blighted Mantua, a History of Poverty, Crime and Pride*, AL JAZEERA AM. (Jan. 28, 2014, 10:30 AM), http://america.aljazeera.com/articles/2014/1/28/obama-philadelphiapromizezonesmantua.html [https://perma.cc/ZH3H-7GYE]. Mantua is located in zip code 19104.

74. *Id.*

75. *McMichael Morton Sch.*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6865 [https://perma.cc/B88U-AZB5].

76. *Id.*; PA. DEP'T OF EDUC., 2015–16 OPPORTUNITY SCHOLARSHIP TAX CREDIT PROGRAM—LIST OF LOW ACHIEVING SCHOOLS, http://www.education.pa.gov/Documents/K-12/Opportunity%20Scholarship%20Tax%20Credit%20Program/2015-16%20OSTCP%20-%20List%20of%20Low%20Achieving%20Schools.pdf [https://perma.cc/A7SS-24PU]. The neighborhood middle school is not much better. In 2013, only 27% of graduating eighth graders scored proficient or above in math and only 36% scored as proficient in reading. Kilpatrick, *supra* note 73.

One reporter described Mantua as of 2014 saying, "Drugs, crime, violence, incarceration and blight are all too familiar. A colorful recreation center and popular public library serve as community hubs but are surrounded by blocks of homes in disrepair, many of them boarded up, in varying stages of collapse."[77] In 2015, Mantua ranked number four out of fifty-five Philadelphia neighborhoods for the most violent crimes.[78] Health statistics for Mantua and the bordering neighborhood of Belmont, which is the location of nine LIHTC properties, have reflected higher than average rates of heart disease and babies born with low birth weight.[79]

The schools in another West Philadelphia neighborhood with a high number of LIHTC properties,[80] Haddington, have been described as "among the worst in the city, according to the school district's yearly progress reports."[81] The three neighborhood high schools are "ranked in the bottom quartile of city schools, and among the 10 worst in terms of college and career readiness."[82] All three high schools have a highly segregated student body and a high percentage of economically disadvantaged students and safety problems.[83]

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77. Kilpatrick, *supra* note 73.

78. *Crime in Philadelphia*, PHILA. INQUIRER, http://data.philly.com/philly/crime/?from=2015-01-01&to=2015-12-31&nType=crime&dNeigh=Mantua [https://perma.cc/2FGY-HQB3] (interactive graphic). The violent crime rate was 1.62 per 1000 people, for a total of 203 violent crimes that included 3 homicides, 18 rapes, 43 robberies, and 172 assaults in a single year. *Id.* In addition, the neighborhood was the site of 377 property crimes, making it the Philadelphia neighborhood with the twenty-second highest rate of crimes like burglary, theft, and auto theft. *Id.*

79. While recent neighborhood-level data is not publicly available, the rate of heart disease in Mantua and Belmont in 2000 were 4/1000 residents and 4.8/1000 residents, respectively, as compared to 3.1/1000 residents in Philadelphia as a whole. BRITT FREMSTAD, JODINE GORDON, JOSH HOFFMAN, HOLLIS SAVAGE, PAUL VADE STOUWE & ANDY TURNER, THE QUALITY OF LIFE IN TWO WEST PHILADELPHIA NEIGHBORHOODS: THE CASE OF BELMONT AND MANTUA 55–56 (2006) http://www.archives.upenn.edu/histy/features/upwphil/belmont_mantua.pdf [https://perma.cc/8TRE-CZJV]. Mothers in both neighborhoods were almost three times as likely as mothers in the rest of Philadelphia to give birth with late or no prenatal care, and in Mantua the rate of births with low birth weight was twice as high as in Philadelphia as a whole. *Id.*

80. There are nineteen LIHTC properties in Haddington.

81. Max Marin, *The Philly Neighborhood Where Household Income Has Crumbled*, PHILLY VOICE (June 24, 2016), http://www.phillyvoice.com/philly-neighborhood-household-income-declines-55-percent-2000 [https://perma.cc/FZ3B-WDXZ].

82. *Id.*

83. West Philadelphia High School students are 96.44% Black and 89% economically disadvantaged; Overbrook High School students are 96.84% Black and 80% economically disadvantaged; and William L. Sayre High School students are 95.65% Black and 83% economically disadvantaged. *West Philadelphia HS*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6964 [https://perma.cc/GU6U-MZPE]; *Overbrook HS*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6887 [https://perma.cc/VT96-66QF]; *Sayre William L MS*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6924 [https://perma.cc/NBA4-22TB]. In the 2014–2015 school year, Overbrook High School reported 86 incidents involving 120 students, where 65 incidents involved law enforcement officers and 30 resulted in arrests. *Safe Schools - School Report*, SAFE SCHOOLS ONLINE (Oct. 28, 2015, 10:04 AM), https://www.safeschools.state

Many of Philadelphia's LIHTC properties are in neighborhoods like these. These neighborhoods highlight the distance—physically, economically, and socially—between the homeowners who receive mortgage interest deduction benefits and the tenants who live in LIHTC properties. As explained in Part I.B, the clustering of LIHTC properties is a documented problem in many cities, and especially in northeastern cities like Philadelphia. Residents who live in neighborhoods like these experience communities that are, in many respects, segregated: the neighborhood population and school student bodies are disproportionately comprised by Black or Hispanic minorities. The adult populations are less likely to be highly educated and more likely to have low incomes or be in poverty. The neighborhoods have higher crime rates and higher than average rates of illness, and the schools are lower quality. The residents of these neighborhoods experience clear place-based disadvantage relative to those who live in the neighborhoods that receive the most value from the mortgage interest deduction.

3. Neighborhoods in Zip Codes with Both LIHTC Properties and High Mortgage Interest Deduction Benefit

In the rare cases when large numbers of LIHTC properties exist in Philadelphia zip codes that also receive a large share of mortgage interest deduction benefits, the apparent overlap is usually the result of gentrification—and what looks like integration based on zip-code level numbers tends to look much more segregated from the ground. Take adjacent zip codes 19146 and 19147, for example, each of which claim some of the highest value from the mortgage interest deduction in the city while also featuring twenty-six and ten LIHTC properties, respectively. These zip codes contain a long list of gentrified or gentrifying neighborhoods;[84] however, an industry study

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.pa.us [https://perma.cc/7G4W-N7TY] (search School Safety > School Safety Historic > 2015 > Public School/District Report > P > Philadelphia City SD > Overbrook HS). William Sayre reported similar numbers, with 70 incidents involving 110 students, where 39 incidents involved law enforcement and 20 resulted in arrests. *Id.* (search Philadelphia City SD > Sayre William L MS). In 2015, West Philadelphia High School reported 48 safety incidents, 21 of which involved law enforcement and 7 resulting in arrests. *Id.* (search Philadelphia City SD > West Philadelphia HS).

84. These zip codes include the Graduate Hospital (or, "Southwest Center City") neighborhood; the "trendy" Fitler Square neighborhood; gentrifying neighborhoods called Passyunk Square and Point Breeze; and a long-gentrified wealthy neighborhood called Queen Village. Prudential Fox & Roach, *Passyunk Square: Philadelphia's Up-and-Coming Neighborhood*, PHILA. MAG.: PROP. (May 14, 2013), http://www.phillymag.com/property/2013/05/14/philadelphias-up-and-coming-neighborhood [https://perma.cc/YR8K-3GDH] (describes Passyunk Square as gentrified by young professionals); Dylan Gottlieb, *Gentrification*, ENCYCLOPEDIA OF GREATER PHILA., http://philadelphiaencyclopedia.org/archive/gentrification [https://perma.cc/G4X4-CEHT]; Melissa Romero, *Report: Philly's Top 15 Gentrifying Neighborhoods*, CURBED PHILA. (May 20, 2016, 9:00 AM), http://philly.curbed.com/2016/5/20/11717308/philadelphia-top-gentrifying-neighborhoods [https://perma.cc/QT2C-KZLA] (describes Graduate Hospital as rapidly gentrifying); Kevin C. Shelly, *Devil's Pocket Neighborhood Fading Away*, PHILLY VOICE (Aug. 27, 2015), http://www.phillyvoice.com/devils-pocket-neighborhood-fading-away [https://perma.cc/M3YL-7ZMZ] (describes Fitler Square as "trendy").

of the effect of gentrification *within* these neighborhoods showed that gentrification did not create significantly more racial mixing, but rather moved Black-White boundary lines as the White population in these neighborhoods expanded.[85]

In some cases, the location of affordable housing projects has created the boundaries. This has been the case in the Queen Village neighborhood in zip code 19147, which features a single affordable housing project called the Courtyard Apartments, which was rehabilitated using the LIHTC.[86] According to one account, "[p]rior to its demolition in 2000, the complex suffered from severely deteriorated infrastructure. Incinerators would clog frequently and spew foul smoke into the apartments, elevators worked only intermittently, and at least one of the towers experienced an infestation of black rat snakes."[87] The deteriorated project was replaced with brick, low-rise apartments and renamed the Courtyard Apartments, helping to remove "'the invisible barrier' the projects created."[88]

Nevertheless, a Philadelphia urban planning blog recently noted, "there is still a divide between [the Courtyard Apartments residents] and the six-figure income households that surround them,"[89] and according to another report, "[t]he northern border of Courtyard Apartments on Christian Street still feels like a hard boundary, with the increasing affluence of Queen Village a world apart."[90] In fact, that invisible

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85. Jonathan Tannen, *Do Neighborhoods Spread?*, ECONSULT SOLUTIONS (June 10, 2016), http://www.econsultsolutions.com/do-neighborhoods-spread [https://perma.cc/NL7J-TJ4Q].

86. The Courtyard Apartments, which were previously named the Southwark Plaza, are recorded by HUD as located at 401 Washington Avenue, Philadelphia, PA 19147. *LIHTC Database Access*, HUD, https://lihtc.huduser.gov [https://perma.cc/S2GK-CXTR] (search Pennsylvania > Philadelphia). In the 1970s, real estate developers coined the moniker "Queen Village" to rebrand the South Philadelphia neighborhood previously known as Southwark. Gottlieb, *supra* note 84. Southwark had been named for the pre-LIHTC Southwark Plaza public housing complex, which consisted of three high-rise buildings and some townhomes. Jake Blumgart, *Queen Villagers Work Toward Neighborhood Integration by Organizing Around Kids*, PLANPHILLY (Aug. 2, 2016), http://planphilly.com/articles/2016/08/02/queen-villagers-work-toward-neighborhood-integration-by-organizing-around-kids [https://perma.cc/L9ZL-X7U2]. At the time, one former resident recalled, "It was all separated . . . Queen Village was with Queen Village and they didn't even consider Southwark Queen Village at that time." *Id.* The neighborhood distinction began to blur, however, when the Southwark project was rehabilitated using LIHTC financing. Alan J. Heavens, *Town by Town: Queen Village, a Neighborhood of Reinvention*, PHILA. INQUIRER (Apr. 21, 2013, 3:01 AM), http://www.philly.com/philly/business/real_estate/town-by-town/20130421_Town_By_Town___Queen_Village__By_the_Numbers.html [https://perma.cc/A9U6-TTHD].

87. Blumgart, *supra* note 86.

88. *Id.*; Heavens, *supra* note 86.

89. Blumgart, *supra* note 86.

90. *Id.* The division is particularly striking with respect to the schools. Children in the more traditionally affluent part of Queen Village attend William M. Meredith Elementary School, where the student body is 63.56% White (roughly on par with the zip code demographics, which reflect a population that is 72.8% White, *American FactFinder Community Facts*, *supra* note 55 (search 19147 > Population > 2016 American Community Survey > Demographic and Housing Estimates > 2014) (reporting that 72.8% of single race households was White)) and 18% of students are economically disadvantaged. *Meredith William M Sch.*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6868 [https://

barrier sits on the border of Queen Village and another neighborhood within the zip code—Dickinson Narrows—that has five LIHTC properties.

In sum, the spatial distribution of tax-based housing subsidies in Philadelphia points to neighborhoods with advantage and disadvantage, wealthy homeowners and poor tenants, White schools and Black (or Hispanic) schools. Mapping the flow of the mortgage interest deduction benefits and LIHTC properties identifies the neighborhoods that receive tax-based housing subsidies, and a closer look reveals that those neighborhoods are as different as the populations that receive the subsidies—and, often, they are as far apart physically as their residents are socially and economically.

The remainder of this Article will explore the relationship between these two tax-based subsidies and place of residence. The next Part will explain how aspects of the mortgage interest deduction and LIHTC program reward the current distribution and the economic and racial segregation it reflects. In other words, these spatial distributions do not merely follow from existing inequality, immobility, and segregation patterns that have arisen from other forces. Rather, the mortgage interest deduction and LIHTC programs independently create economic incentives and disincentives that may exacerbate these other, nontax problems and present further barriers to integration.

III. How Tax-Based Housing Subsidies Reinforce and Reward Segregation

A. The Mortgage Interest Deduction Rewards Segregation and Restricts Low- and Middle-Income Housing Choice

We have seen that the spatial distribution of tax-based housing subsidies varies in a way that apparently reflects residential segregation patterns. This Part asks whether these tax-based housing subsidies have the capacity to exacerbate other forces to help reinforce such segregation patterns. The answer, I will argue, is yes. This Part begins

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perma.cc/LN9D-9UEA]. A nonprofit organization led by the Philadelphia Schools Partnership rated the school a 10 of 10 in an assessment of the school's academics, attendance, and safety. *William M. Meredith School*, GREAT PHILLY SCHOOLS, http://greatphillyschools.org/schools/william-m-meredith-school [https://perma.cc/M836-KN66]. When school budgets were cut in the years after the financial crisis, parents at William M. Meredith donated over $15,000 in one night to offset the budget cuts at their children's school. Blumgart, *supra* note 86. In contrast, the Courtyard Apartments feed into George W. Nebinger Elementary School, which serves a student body that is 44.03% Black, 22.39% Hispanic, 11.69% Asian,only 9.95% White, and 68% economically disadvantaged. *Nebinger George W Sch.*, PA. SCH. PERFORMANCE PROFILE, http://paschoolperformance.org/Profile/6880 [https://perma.cc/EV6P-5J4M]. The school has been designated by the state as a "low-achieving school" based on combined math and reading scores on the Pennsylvania System of School Assessment test. *See* PA. DEP'T OF EDUC., 2015-16 OPPORTUNITY SCHOLARSHIP TAX CREDIT PROGRAM - LIST OF LOW ACHIEVING SCHOOLS, http://www.education.pa.gov/Documents/K-12/Opportunity%20Scholarship%20Tax%20Credit%20Program/2015-16%20OSTCP%20-%20List%20of%20Low%20Achieving%20Schools.pdf [https://perma.cc/6Q7T-XU8F]. And unlike the school attended by its students' wealthy neighbors, the Nebinger school was placed on a list of schools considered for closure after the financial crisis. Blumgart, *supra* note 86.

by showing how the mortgage interest deduction may have locational effects that can help reinforce and reward de facto segregation of racial and socioeconomic groups.

The mortgage interest deduction may impact housing choice in at least two ways that can harm low-income people. First, when the mortgage interest deduction is not fully capitalized, it reduces the cost of moving to higher quality-of-life areas—including areas that are disproportionately wealthy and White—for its target demographic, which is also disproportionately wealthy and White. In this way, the tax law may help subsidize the movement of middle- and upper-income White taxpayers away from locations with more low-income or minority residents, thereby reinforcing segregation patterns. Second, when the mortgage interest deduction is capitalized, it may serve to limit housing choice among lower-income homeowners by driving up home prices. This section will explain both effects in turn.

1. The Mortgage Interest Deduction Reduces Wealthy Homebuyers' Cost of Moving to High Quality of Life Areas

Economists David Albouy and Andrew Hanson have explored the mechanism by which the mortgage interest deduction reduces the cost of moving to higher quality-of-life areas.[91] They argue that an important function of the mortgage interest deduction is to offset costs arising from property taxation and the federal income tax that would otherwise create disincentives to move to higher quality-of-life areas.[92] The argument is best understood through examples.

In the first case, Albouy and Hanson assume that a typical worker earns $10,000 in location A but would earn $20,000 for performing the same job in location B, which has a higher cost of living but similar quality of life.[93] The worker will owe more dollars in tax in location B than in location A due to the increased earnings. If we assume further that the wage rate strongly correlates to the cost of living—and the worker therefore needs the extra $20,000 to maintain the same standard of living in location B—then the income tax increase can be understood as a penalty for moving. The tax increase will "dull" the wage incentive to move by rendering the worker's wage bump insufficient to cover the higher cost of living.[94] One solution to this problem would be to index the income tax rate to the cost of living so that the worker will not pay additional taxes on the extra $20,000 of earnings, thereby eliminating the penalty for moving. Another solution is the approach taken in current law: offset the penalty through tax preferences like the mortgage interest deduction.

Now, assume instead that the same worker is considering a move to location C, which also has a higher cost of living than location A. This time, assume that the

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91. David Albouy & Andrew Hanson, *Are Houses Too Big or in the Wrong Place? Tax Benefits to Housing and Inefficiencies in Location and Consumption*, 28 TAX POL'Y & ECON. 63 (2014). Albouy and Hanson argue that, in many cases, the mortgage interest deduction serves to increase overall efficiency by helping to counteract weaker locational disincentives caused by property taxation and the federal income tax. *Id.*

92. *Id.* at 66.

93. *Id.* at 69.

94. *Id.*

worker's wages will not rise in location C despite the increase in cost of living. The worker might still want to move to location C to take advantage of higher quality of life in location C, which might have better schools, prettier landscapes, more desirable social circles, greater cultural capital, and so forth. Since the worker's wages are staying constant, he or she would incur no extra tax liability in the move; there is no penalty arising from income taxation in this case. The worker is free to move to location B in order to take advantage of the higher quality of life without any tax-based disincentive. Under this scenario, if the income tax rate were indexed for cost of living, then the worker will receive a tax break for moving to the higher quality-of-life area that amounts to a bonus.[95] Where in the first example indexing simply avoided what would otherwise give rise to a tax-based disincentive to move, in this example indexing would actively provide a bonus that functions as a tax-based *incentive* to move.[96]

Although the federal income tax is not indexed, a similar bonus may arise from the use of the mortgage interest deduction. People bid up prices for housing at every wage level for high quality-of-life areas, so such areas can charge higher prices while offering lower wages.[97] As a result, higher quality-of-life areas are associated with higher home prices, which are in turn associated with higher mortgage interest deduction amounts. To maximize the economic benefit that could be gained from the mortgage interest deduction, then, a taxpayer should move to a higher quality-of-life area with higher home prices. If the taxpayer's wages stay constant in the move, then as seen above, the larger mortgage interest deduction will amount to a bonus. That bonus can be understood as a subsidy to help finance a move to a higher quality-of-life location.

Albouy and Hanson use cities as bases for comparison to illustrate their theory. They imagine a taxpayer considering a move from Nashville to Miami, for example. But a more plausible—and potentially troubling—set of examples can be found in cities and their surrounding suburbs. The mortgage interest deduction is maximized when city workers choose to live in higher quality-of-life locations within commuting distance of their urban jobs. Returning to the Philadelphia case study, consider the case of a hypothetical taxpayer who works in center city Philadelphia and has a marginal tax rate of 33%.

The taxpayer would prefer to pay no more than $650 per month for housing (exclusive of insurance and property tax). In a world with no mortgage interest deduction, the taxpayer might choose to live in the North Philadelphia neighborhoods of Burholme or Fox Chase, within zip code 19111. According to a recent

95. *Id.* at 70–71.

96. Stated differently, in the first example, the taxpayer was willing to move if he received a $20,000 pay bump, but the income tax lowered that pay bump and made him less willing to move. In the second example, the taxpayer was willing to move without any salary increase because the new location has a higher quality of life. Since he is induced by the quality of life, and not by the salary, there is no reason for the tax system to increase his take-home pay; but doing so creates an incentive.

97. Albouy & Hanson, *supra* note 91, at 71.

survey, the median home value in that area was $174,600 in 2014.[98] If the taxpayer makes a 20% down payment ($34,920) on a home priced at that median value, then he or she would need to secure a mortgage for $139,680.[99]

The real estate company Zillow estimates that a $139,680 principal thirty-year mortgage at 3.98% interest rate would require the taxpayer to pay approximately $665 per month during the first year to begin repaying the mortgage (principal and interest).[100] Though $665 a month is slightly above this taxpayer's budget, it is far more affordable than homes in the wealthier suburb of Downingtown—featured in Part I.C—where houses priced at the median of $218,200 would cost about $831 a month in combined interest and principal.[101] Without the mortgage interest deduction, Downingtown would be unaffordable to this taxpayer, who might settle for the slightly over-budget Burholme/Fox Chase home within the Philadelphia city limits.

If the mortgage interest deduction is allowed, however, then the taxpayer could anticipate a deduction for approximately $6891 of mortgage interest paid in the first year (and additional, lower amounts in subsequent years) if he or she purchases the home in Downingtown.[102] Given the taxpayer's 33% tax rate, he or she would receive up to $2274 in value from the mortgage interest deduction. If that amount is understood as an offset against the prior year's housing payments, then the monthly payment for a house in Downingtown is now lowered to $642, which is within the taxpayer's budget.[103] By lowering the cost of financing a house in Downingtown, the tax law creates an incentive to move out of Philadelphia to a wealthier suburb that is only ten minutes farther away from the taxpayer's center city office. The table below summarizes this example.

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98. *American FactFinder Community Facts*, *supra* note 55 (search 19111 > Housing > Selected Housing Characteristics > 2014).

99. Calculations by author.

100. *Mortgage Calculator*, ZILLOW, https://www.zillow.com/mortgage-calculator [https://perma.cc/C8K3-DD9L].

101. *American FactFinder Community Facts*, *supra* note 55 (search Downiningtown borough, Pennsylvania > Housing > Selected Housing Characteristics > 2014); *Mortgage Calculator*, *supra* note 100.

102. To keep the example simple, I have focused on the effects of the mortgage interest deduction on costs in the first year. The actual value of the deduction over the course of the loan can be difficult for taxpayers to predict due to complex amortization schedules, the time value of money, varying marginal tax rates, and uncertainty about how long the house will be lived in or owned. Given the uncertainty, as a practical matter, homebuyers are unlikely to make purchase decisions based on long-term expectations about the mortgage interest deduction value. *See* Rebecca N. Morrow, *Billions of Tax Dollars Spent Inflating the Housing Bubble: How and Why the Mortgage Interest Deduction Failed*, 17 FORDHAM J. CORP. & FIN. L. 751, 783–98 (2012). Nevertheless, as discussed in Parts III and IV, there is reason to think the deduction does impact home purchase decisions. The value of the mortgage interest deduction in the early years may be especially likely to impact decisions since its value during that period is more readily apparent.

103. The time value of money is ignored for simplicity.

A	B	C	D	E	F	G
Location	**Median Home Price***	**Principal Paid in the First Year†**	**Interest Paid in the First Year†**	**Value of Mortgage Interest Deduction (D*33%)**	**Average Monthly Payment Without MID [(C+D)/12]**	**Average Monthly Payment With MID [F–(E/12)]**
Downingtown	$218,200	$3,084	$6,891	$2,274	$831	$642
Burholme/ Fox Chase	$174,600	$2,468	$5,515	$1,820	$665	$513

*** Median home prices are based on those reported in the 2010–2014 American Community Survey.**

† Principal and interest are estimated using a publicly available mortgage amortization calculator provided by Zillow. In each case, the dollar amounts assume a 20% down payment on a 30-year mortgage with a 3.98% interest rate.

Table 2.

Therefore, the mortgage interest deduction provides an economic incentive for the taxpayer to choose Downingtown over the Burholme/Fox Chase neighborhoods within Philadelphia. Specifically, the mortgage interest deduction reduces the price of the suburban home in order to make it more affordable to the homebuyer. One may be tempted to object that this conclusion assumes that the mortgage interest deduction is not fully capitalized into the home prices.[104] This is true; however, empirical evidence suggests that the degree of capitalization varies by location, and suburbs generally experience less capitalization than high-density urban areas since there is a greater ability to increase supply to meet increased demand in suburban locations.[105] It is therefore reasonable to assume that the mortgage interest deduction does, in fact, reduce the cost of housing in low-density suburbs and lower-density parts of urban areas.

Importantly, a portion of that reduced home price is attributable to a bonus the taxpayer received solely on account of choosing Downingtown (where home prices

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104. Some or all mortgage interest deduction value may function to raise the purchase prices of homes. This may occur if the deduction increases demand in an area that is unable to meet that demand with additional supply of housing. The increased demand helps to drive up the home prices so that the deduction, when it is finally claimed, merely offsets that added cost. *See* Morrow, *supra* note 102, at 768 n.60. If the mortgage interest deduction is built into home prices, then the home prices themselves would be lower in a world without the mortgage interest deduction—and if that price were low enough, then the taxpayer might be able to afford to buy in Downingtown in the no-deduction world after all.

105. *Id.* at 798. In many cities, land-use regulations restrict the location, size, or height of housing, thereby limiting supply. SANDFORD IKEDA & EMILY WASHINGTON, MERCATUS CTR., HOW LAND-USE REGULATION UNDERMINES AFFORDABLE HOUSING (2015), https://www.mercatus.org/system/files/Ikeda-Land-Use-Regulation.pdf [https://perma.cc/A2DN-BJEP].

are higher due to higher quality of life) over Burholme/Fox Chase. If the taxpayer moves to Downingtown, then he or she will receive $2274 in value from the mortgage interest deduction in the first year, as compared to the $1820 the taxpayer would receive in Burlholme/Fox Chase. Assume that the taxpayer's wage earnings have remained unchanged because, like many commuters, he or she will continue to work in center city Philadelphia regardless of place of residence. The taxpayer's gross income remains constant, but the taxpayer will save $454 in taxes simply by moving to Downingtown. That extra $454 attributable to the increased deduction size is a bonus for choosing Downingtown.

Stated differently, the taxpayer received a home price reduction that was $454 more than it would have been otherwise. On these facts, our taxpayer saved approximately $38 a month due to the bonus portion. That $38 was the difference between a $642 per month mortgage payment that was within the taxpayer's $650 budget, versus a $680 per month mortgage payment that may well be deemed unaffordable. This analysis is summarized in the table below.

A	B	C	D	E	F
Location	**Value of Mortgage Interest Deduction**	**Bonus Portion**	**Average Monthly Payment Without MID**	**Average Monthly Payment with MID (Including Bonus)**	**Average Monthly Payment with MID (Excluding Bonus)**
Downingtown	$2,274 (~$189.5/mo)	$454 (~$38/mo)	$831	$642	$680
Burholme/ Fox Chase	$1,820 (~$152/mo)	---	$665	$513	$513

Table 3.

It makes no difference to the analysis that, in choosing Downingtown over Burholme/Fox Chase, our taxpayer chose to pay $129 per month more for housing—an amount that eclipses the size of the bonus. The fact remains that, in our hypothetical, the mortgage interest deduction successfully reduced the housing prices in Downingtown to a level affordable to the taxpayer. And one of the reasons that it achieved that goal was by providing the taxpayer with a $38 bonus to be used toward mortgage financing instead of tax payments.

In conclusion, the mortgage interest deduction not only enhances the homebuyer's housing choice by expanding the range of affordable options, but it also rewards the choice to move to higher-cost areas with higher quality of life. This analysis has important implications for the problem of urban segregation. Tax professor Dorothy Brown has noted that "[m]iddle- and upper-income taxpayers who are overwhelmingly white benefit the most from federal tax subsidies for housing."[106] It is that wealthy, White demographic that is most likely to benefit from increased purchasing power in wealthy suburban housing markets or other high quality of life areas. In the

106. Brown, *supra* note 14, at 333.

metropolitan context, "higher quality of life" often correlates with richer, whiter communities that may or may not be located in the suburbs. Even small economic incentives in support of White flight and racial or economic segregation should be disfavored given the growing concerns about economic and racial inequality in America.

2. Capitalization of the Mortgage Interest Deduction Reduces Affordable Housing Options for Lower-Income Homebuyers

In addition to expanding housing options for claimants of the mortgage interest deduction, the tax preference may limit housing choice for those who do not. The reason lies in the effect of capitalization. Capitalization occurs when an area is unable to meet increased demand caused by the tax incentive.[107] In such areas, the high demand drives up home prices across the board for all potential homeowners—whether or not those homeowners can claim the mortgage interest deduction. Since many middle-class homeowners do not itemize their tax returns, and few if any low-income taxpayers itemize, both populations may be subject to higher home prices without the ability to offset the price with the mortgage interest deduction.[108] This problem may be especially pronounced in high-density urban areas that cannot readily increase housing supply.[109]

Artificially inflated home prices may present a barrier to entry for middle- and lower-income homebuyers.[110] They may also force some to choose neighborhoods with lower quality of life or less economic and racial diversity than they may be able to afford in a world without inflated home prices. In other words, to the extent that the mortgage interest deduction is capitalized into home prices, it may function to limit housing choice for persons who are *not* able to use the deduction. This harm reaches well beyond the low-income tenant population that is the primary focus of this Article, and it may further exacerbate the other problems discussed here.

Whether the mortgage interest deduction is fully capitalized or not, therefore, it may harm low-income persons and minorities. First, if the mortgage interest deduction is not fully capitalized—as is often true of low-density suburban areas—it can help lower the price of housing for homebuyers who rely on mortgages as described above. As a result, it may increase housing choice for a wealthy, White population in a manner that rewards White flight and racial and socioeconomic segregation. Second, in areas where the mortgage interest deduction is capitalized into home prices, it may restrict housing choice for middle- and lower-income persons, including many minorities, by driving up home prices and leaving them with fewer affordable options for location of residence. These potential harms may compound other

107. *See* Morrow, *supra* note 102, at 768 n.60.

108. Even if low- or middle-income taxpayers were to itemize, the benefit they receive from the deduction will be lower than what is received by a higher income taxpayer. The reason is not only because their marginal tax rate is lower but also because the itemized deductions may only slightly exceed the standard deduction. As a result, their itemized deductions (including the mortgage interest deduction) would lower their taxes only slightly more than what would be achieved with the standard deduction alone.

109. Morrow, *supra* note 102, at 768 n.60.

110. Brown, *supra* note 14, at 337; Morrow, *supra* note 102, at 798.

problems that arise from LIHTC program design and administration, as described in the next subpart.

B. The LIHTC Program Rewards Segregation and Restricts Low-Income Tenants' Rental Options

Having demonstrated how the mortgage interest deduction rewards segregation and limits the affordable housing options available to low- and middle-income homebuyers, this Part now turns to the ways that the LIHTC program rewards segregation and restricts low-income tenants' rental options. The LIHTC program rewards segregation through a combination of federal law and state administrative procedures that make the credit most available to developers who locate projects in high-poverty, often-segregated areas. A serious consequence is that the LIHTC program has the tendency to limit housing choice for low-income tenants in at least two ways. First, because these policies lead to a spatial distribution of LIHTC properties that is often limited to high-poverty, inner-city locations, many low-income tenants who wish to benefit from the tax law may be restricted to those locations.

Second, the LIHTC program may limit the effectiveness of tenant voucher programs that rely, at least in part, on LIHTC properties to support the program. Landlords of LIHTC properties are required by law to accept tenant vouchers; however, if the goal of tenant vouchers is to expand low-income tenants' housing choices, then that goal may be partially undermined by the LIHTC program since the spatial distribution of LIHTC properties leaves them few options. This section will consider these problems and the nature of recent reforms intended to correct them.

1. Federal Tax Law and State Administrative Procedures Reward Development of LIHTC Properties in Segregated Neighborhoods

Federal law requires states to adopt a qualified allocation plan that sets forth prioritization criteria for awarding LIHTC credits to developer applicants. There are two reasons why projects located in economically and racially segregated areas may be more likely than others to receive LIHTC allocations under these plans. First, states are required by statute to weigh location among the prioritization criteria set forth in a qualified allocation plans,[111] but the law does not detail how location should be weighed.[112] Many states give priority to projects located in very low-income areas perceived as having a greater affordable housing need.[113]

Second, federal law provides for higher credit amounts for projects located in certain areas, and some researchers have observed that developers are more likely to apply for LIHTC allocations for projects located in those areas, increasing the

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111. I.R.C. § 42(m)(1)(C) (Westlaw through Pub. L. No. 115-40).

112. As a result, the same location criteria may be weighed differently by different states. *See* U.S. DEP'T OF HOUS. & URBAN DEV., EFFECT OF QAP INCENTIVES ON THE LOCATION OF LIHTC PROPERTIES 1 (2015), https://www.novoco.com/sites/default/files/atoms/files/pdr_qap_incentive_location_lihtc_properties_050615.pdf [https://perma.cc/KP2F-5VQG].

113. *Id.* at 2–3.

likelihood that such projects will receive allocations.[114] The size of the LIHTC is always calculated by multiplying an eligible portion of a project's basis by an applicable percentage set forth in the statute;[115] however, the eligible basis on which the credit is calculated is increased to 130% when a project is located in a statutorily defined qualified census tract or a difficult development area.[116] These rules, which are commonly referred to as the qualified census tract or difficult development area basis boost provisions, make projects built in very low-income or high-poverty areas eligible for an LIHTC up to 30% larger than comparable projects built in higher-income or lower-poverty areas.[117] Several researchers have attributed clustering of LIHTC properties in low-income areas to these basis boost provisions.[118]

In conclusion, to the extent that the tax law and state administrative procedures make it more likely that the tax credits will be allocated to properties in economically

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114. *Id.* at 3. As discussed below, these provisions have been blamed for promoting allocations of tax credits that have a harmful disparate impact on racial minorities. Between their prioritization methods and their handling of the credit boosts, several states have drawn criticism and have been named in legal complaints related to the allocation of LIHTCs. Since 2008, federal law has given states greater flexibility in administering the tax credits, and several states have adjusted their qualified allocation plans to help minimize the disparate impact on minorities. *See infra* Part V. As such, there is considerable variation across states in the administration and impact of the LIHTC program, and many state policies are relatively new and untested.

115. I.R.C. § 42(a) (Westlaw through Pub. L. No. 115-40). For new buildings that are not otherwise receiving federal subsidies, the size of the LIHTC is set to equal seventy percent of the "qualified basis" over the ten-year period when the credit is available. I.R.C. § 42(a), (b)(1)–(2) (explaining that the size of the credit for any given year is determined by multiplying the adjusted basis of the eligible building by an "applicable percentage," where the applicable percentage is defined as the percentage "which will yield over a 10-year period amounts of credit . . . which have a present value equal to . . . 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year", and the credit for non-federally subsidized new buildings equals at least nine percent of the qualified basis of each qualified low-income building.). The qualified basis is determined by multiplying the "eligible basis" by the smaller of (i) the percentage of total units dedicated to low-income units, or (ii) the percentage of total floor space dedicated to low-income units. As a baseline rule, the "eligible basis" of a new building is its adjusted basis at the close of the first taxable year of the credit period; however, the eligible basis is increased in the case of qualified census tracts or difficult development areas. I.R.C. § 42(c).

116. I.R.C. § 42(d)(5)(B). Under current law, a tract is deemed a qualified census tract if "50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent." I.R.C. § 42(d)(5)(B)(ii)(I). The initial criteria for designating qualified census tracts was entirely income based, but an alternative poverty-rate criteria was added by the Community Renewal Tax Relief Act in 2000. In contrast, difficult development areas are specifically designated by HUD as areas where the costs of construction, land, and utilities are high relative to area median gross income. I.R.C. § 42(d)(5)(B)(iii)(I).

117. I.R.C. § 42(d)(5)(B)(i).

118. Nathaniel Baum-Snow & Justin Marion, *The Effects of Low Income Housing Tax Credit Developments on Neighborhoods*, 93 J. PUB. ECON. 654, 655 (2009); Dawkins, *supra* note 26, at 231.

and racially segregated areas than in other areas, the LIHTC program rewards segregation. This, alone, would be reason to consider reform. But these policies also harm low-income tenants in a second way: by limiting the effectiveness of nontax programs intended to promote housing choice. This problem is taken up in the next subpart.

2. The LIHTC Program Limits Low-Income Tenants' Housing Choice

Because the total amount of LIHTCs each state can allocate is capped,[119] projects developed in high-poverty areas may come at the exclusion of projects built in lower-poverty areas. By disproportionately siting affordable housing in high-poverty areas, and especially in inner cities, the LIHTC program may have the dual effects of steering low-income residents to those neighborhoods and limiting their housing options elsewhere, thereby restricting their ability to leave.[120] It may also limit the effectiveness of a major nontax alternative to the project-based LIHTC program: the Section 8 tenant voucher program (or the "Housing Choice Voucher program"), which is specifically designed to improve residential mobility of low-income tenants.

The Housing Choice Voucher program, which provides a tenant-side subsidy to low-income tenants for use toward housing, is the largest subsidy for affordable housing.[121] The goals of the program have been described as to promote "better housing quality, more geographic mobility, and increased self-sufficiency for very low-income renters, in addition to alleviating their housing affordability problems."[122] The efficacy of that program has been questioned, however, by those who have observed that voucher users often do not move at all, let alone to areas with lower poverty.[123]

When low-income residents in Florida were displaced from properties retired from subsidized housing inventories, the majority of residents relocated to neighborhoods with similar characteristics as their original neighborhoods.[124] This outcome

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119. Each state is generally limited to the greater of $1.75 per resident or $2,000,000. I.R.C. § 42(h)(3)(C)(ii). In addition, an antitax shelter restriction placed on the credit was a $25,000 per taxpayer limit on use of passive losses. Advocates worried that the limit "would severely restrict the credit's marketability to the traditional consumers of tax preferences —wealthy earners seeking to lower their liabilities." Zigas, *supra* note 21, at 50.

120. *See* Ellen et al., *supra* note 41, at 233 ("Through encouraging large-scale public housing developments that almost exclusively house very-low-income tenants and allowing these developments to be sited almost exclusively in very-low-income neighborhoods, federal housing policy generally has steered subsidized tenants to extremely low-income and high-poverty communities.").

121. CONG. BUDGET OFFICE, FEDERAL HOUSING ASSISTANCE FOR LOW-INCOME HOUSEHOLDS 2 (2015), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50782-LowIncomeHousing-OneColumn.pdf [https://perma.cc/K4TG-N9UE].

122. Judith D. Feins & Rhiannon Patterson, *Geographic Mobility in the Housing Choice Voucher Program: A Study of Families Entering the Program, 1995–2002*, 8 CITYSCAPE: J. POL'Y DEV. & RES. 21, 21 (2005).

123. *See id.*

124. Dawn E. Jourdan, Anne L. Ray, Elizabeth A. Thompson & Kristen Dikeman, *Relocating from Subsidized Housing in Florida: Are Residents Moving to Opportunity?*, 22 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 155 (2014).

was consistent with prior literature, which suggested that without significant intervention and counseling about how to use tenant vouchers, most voucher holders do not move to better neighborhoods.[125] For example, most voucher users live in neighborhoods with schools comparable to those accessible to households with similar low incomes.[126]

But these facts should not be understood as evidence that low-income tenants do not value neighborhood choice. Rather, there are indications that at least some low-income tenants would choose to move to higher quality neighborhoods if their circumstances permit. One study of the Housing Choice Voucher program found that "[t]here was a small but consistent tendency for families [that moved more than once] to choose slightly better neighborhoods."[127] In addition, there is evidence that voucher holders do move to neighborhoods with higher performing schools when their children reach school age if such options are available.[128] Unfortunately, many tenants "in metropolitan areas where housing options are more constrained (either through segregation in the housing market or through availability of housing) voucher households end up near lower performing schools."[129]

Among the structural problems that may limit the efficacy of the Housing Choice Voucher program is the administration of the LIHTC program. A recent case has highlighted these consequences of current LIHTC policy. The case *Texas Dep't. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, which was filed in the Northern District of Texas in 2008[130] and subsequently worked its way to the Supreme Court in 2015,[131] arose from a complaint by a Dallas-based fair housing and civil rights organization called the Inclusive Communities Project (ICP).[132] One of the services provided by ICP was to assist low-income families with Section 8 vouchers "in finding housing opportunities in the suburban communities in the Dallas area."[133] This assistance included efforts to place such families in LIHTC properties because those landlords cannot refuse to accept the tenant vouchers.

By the state's own admission, its LIHTC properties had been disproportionately sited in high-poverty, mostly minority, inner-city communities, and far fewer affordable housing projects were located in higher-income suburbs.[134] As a result,

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125. *Id.*

126. Keren Mertens Horn, Ingrid Gould Ellen & Amy Ellen Schwartz, *Do Housing Choice Voucher Holders Live Near Good Schools?*, 23 J. HOUSING ECON. 28, 35 (2014).

127. Feins & Patterson, *supra* note 122, at 41.

128. Ingrid Gould Ellen, Keren Mertens Horn & Amy Ellen Schwartz, *Why Don't Housing Choice Voucher Recipients Live Near Better Schools? Insights from Big Data*, 35 J. POL'Y ANAL. & MGMT. 884, 886 (2016).

129. Horn et al., *supra* note 126, at 38.

130. Inclusive Cmtys. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs, 860 F. Supp. 2d 312 (N.D. Tex. 2012).

131. Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, 135 S. Ct. 2507 (2015).

132. *Inclusive Cmtys. Project*, 860 F. Supp. 2d at 314.

133. Complaint at 2–3, *Inclusive Cmtys. Project*, 860 F. Supp. 2d 312 (No. 3:08-cv-00546).

134. *Id.* at 1–2.

ICP alleged that the "disproportionate allocation of housing tax credits to low income minority areas directly interferes with ICP's ability to find housing for its clients in the higher opportunity, predominantly White areas of the Dallas metropolitan area."[135] ICP sued, alleging that the Texas housing authority had allocated LIHTCs in a manner that reinforced historic segregation patterns.[136]

Texas is not the only state that has faced such accusations. Housing authorities in two northeastern states, New Jersey and Connecticut, have been subject to similar lawsuits.[137] The central complaint in all three lawsuits has been the same: state housing authorities administer the LIHTC in a manner that leaves low-income minorities few affordable housing options outside the inner city. None of these lawsuits have been successful.[138] But it is not necessary to prove legal liability to establish that the LIHTC program in these and many other cities has rewarded segregation and limited housing choice. In this way, the LIHTC program may compound nontax problems that limit housing options for low-income persons, such as zoning restrictions and residential patterns born from discriminatory, pre-Civil Rights era housing policies like redlining.[139]

Meanwhile, as explained above, the mortgage interest deduction has worked to exacerbate this harm by limiting housing options for low- and middle-income and minority homebuyers (when the deduction is capitalized) and by providing economic incentives for wealthier, predominantly White homebuyers to move out of inner cities (when the deduction is not capitalized). Together, these two tax laws may interact to reinforce and reward economic and racial segregation, suggesting the need for reform. The next Part will take a step back to ask what we stand to lose from reforming these tax programs, beginning with the LIHTC and then looking at the mortgage interest deduction. In both cases, I will argue that any benefits from the current spatial distribution are too uncertain to justify the potential harms.

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135. *Id.* at 3.

136. *See id.*

137. *E.g.*, Asylum Hill Problem Solving Revitalization Ass'n v. King, 890 A.2d 522 (Conn. 2006); *In re* Adoption of the 2003 Low Income Hous. Tax Credit Qualified Allocation Plan, 848 A.2d 1 (N.J. Super. Ct. App. Div. 2004); *see also* Robert Neuwirth, *Renovation or Ruin*, SHELTERFORCE (Sept. 1, 2004), http://www.shelterforce.org/2004/09/01/renovation-or-ruin [https://perma.cc/5N7A-8GAB].

138. *See Inclusive Cmtys. Project*, 860 F. Supp. 2d at 321 (holding that the plaintiff failed to prove a prima facie case of discrimination by showing that a challenged practice caused a discriminatory effect); *King*, 890 A.2d at 540 (dismissing the claim for lack of standing); In re *Adoption of the 2003 LIHTC Qualified Allocation Plan*, 848 A.2d at 6 (holding that the New Jersey Housing Mortgage Finance Agency did not violate federal or state law).

139. David Albouy & Bert Lue, *Driving to Opportunity: Local Rents, Wages, Commuting, and Sub-Metropolitan Quality of Life*, 89 J. URBAN ECON. 74, 78 (2015) ("As another example, consider the impact of zoning restrictions meant to exclude low-income households. If such zoning is binding, low-income households will have a limited supply of neighborhoods to choose from, say in the central city."); *see also* IKEDA & WASHINGTON, *supra* note 105.

IV. Evaluating the Spatial Distribution of Tax-Based Housing Subsidies: Weighing the Costs And Benefits of Reform

A. The LIHTC Program's Effects on Supply and Externalities Are Uncertain

Part III argued that both the mortgage interest deduction and the LIHTC function to reinforce and reward racial and economic segregation while also limiting housing choice for low- and middle- income earners. But these facts alone may be insufficient to conclude that the LIHTC program should be reformed. First, we need to understand what we would be giving up by reforming these programs. If the current spatial distributions are essential to advance the programs' purposes, then any reform proposals must take that into account. This section will begin this stage of the analysis by asking whether the purposes of the LIHTC program necessitate the current distribution.

The LIHTC is most traditionally understood as a subsidy used to increase the supply of affordable rental housing.[140] For this purpose, the LIHTC works when it lowers the production costs associated with new construction or rehabilitation of rent-controlled rental housing enough to make the project profitable, thereby encouraging developers to invest in affordable housing they would not have otherwise produced.[141] However, the basis boost for qualified census tracts and difficult development areas discussed in Part III.B points to a second goal beyond the primary goal of increasing investment in affordable housing: the LIHTC aims to attract investment in affordable housing specifically to neighborhoods most affected by poverty for the purpose of producing positive externalities. This section will argue that the LIHTC program's success with respect to both of these goals is uncertain.

1. The LIHTC Program Suffers from High Crowd-Out Rates

The primary goal of the LIHTC is to increase the supply of affordable rental housing, but the program's efficacy has been questioned. In order for the LIHTC to increase the supply of housing, it must provide a housing unit to a family that would not have purchased housing in the private market.[142] If the same family would have

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140. *See* Leviner, *supra* note 12, at 869. A building is generally eligible for the credit if it is part of a qualified low-income housing project during the compliance period. I.R.C. § 42(c)(2) (West 2011 & Supp. 2017). A qualified low-income housing project is defined by reference to the income of the tenants. Specifically, the project must be for residential rental housing that meets one of two tests: the 20-50 test or the 40-60 test. I.R.C. § 42(g)(1). A project satisfies the 20-50 test if twenty percent or more of the residential units are both rent-restricted and occupied by individuals whose income is fifty percent less than the area median gross income (AMGI). *Id.* Alternatively, the 40-60 test is satisfied if forty percent or more of the residential units are both rent-restricted and occupied by individuals whose income is sixty percent or less of AMGI. *Id.* A qualified low-income housing building that is part of a project that meets one of these two income-based tests is eligible to receive the LIHTC and will receive the credit for up to ten years if the state housing agency chooses to allocate credits to that project pursuant to its qualified allocation plan.

141. Leviner, *supra* note 12, at 870.

142. Todd Sinai & Joel Waldfogel, *Do Low-Income Housing Subsidies Increase the*

purchased a unit in the private market, then the subsidy will reduce demand in the private market, and that reduced demand for private housing would cause a reduction in the number of private units.[143] Any reduction in private units would offset the new subsidized housing units.[144] This is referred to in the literature as the "crowd-out" effect. The result of crowd-out is a failure to raise the total number of units in the housing stock.[145]

Though the empirical evidence is mixed, some researchers have found that the LIHTC program "substitutes one-for-one for the provision of private sector housing units."[146] Another study found that "displacement of private rental housing construction as a result of LIHTC program is substantial," and "nearly all LIHTC development is offset by crowd-out of unsubsidized rental housing construction."[147]

Occupied Housing Stock?, 89 J. PUB. ECON. 2137, 2143 (2005); *see also* Leviner, *supra* note 12, at 870, 877 (noting that the LIHTC is "generally considered a success" but arguing that "[t]aking into account the effects of the LIHTC in displacing some unsubsidized units, the net increase in rental units in the affordable housing supply is expected to be less than the estimated number of total units produced by the LIHTC").

143. *See* Sinai & Waldfogel, *supra* note 142, at 2142.

144. *See id.*

145. *Id.*

146. Stephen Malpezzi & Kerry Vandell, *Does the Low-Income Housing Tax Credit Increase the Supply of Housing?*, 11 J. HOUSING ECON. 360, 369 (2002). An earlier study by business and real estate scholars Todd Sinai and Joel Waldfogel asked whether affordable housing subsidies increase the number of families housed in their own units, or whether they only displace privately provided affordable housing. Sinai & Waldfogel, *supra* note 142, at 2138; Michael D. Eriksen & Stuart S. Rosenthal, *Crowd Out Effects of Place-Based Subsidized Rental Housing: New Evidence from the LIHTC Program*, 94 J. PUB. ECON. 953, 954, 957 (2010) (explaining the limitations of the Sinai and Waldfogel study). Their study, which focused on the impact of programs that predated the LIHTC program, evaluated the effects of both project-based housing subsidies and tenant-side housing subsidies like tenant vouchers. Sinai and Waldfogel found that housing subsidies do raise the total number of units, but on average, three subsidized units displace two units that would otherwise have been provided by the private market. Sinai and Waldfogel, *supra* note 142, at 2162. In addition, they concluded that project-based housing subsidies displace more private units than tenant vouchers. *Id.* at 2154. Nevertheless, Sinai and Waldfogel had optimistically concluded that project-based subsidies do increase the housing stock despite some displacement of private market units.

147. Eriksen & Rosenthal, *supra* note 146, at 964. To explain their results, Eriksen and Rosenthal hypothesized that the results related to the specific population targeted by the LIHTC. Specifically, they argued that the LIHTC actually targets moderate- (as opposed to low-) income tenants who would have otherwise contributed to the market share for unsubsidized housing. *Id.* at 954. They point to two programmatic features as proof that the LIHTC targets moderate income persons. *Id.* First, the rent ceilings on the subsidized units typically result in rents between the 40th and 50th percentile of private market rents. *Id.* These rates are relatively high and "unaffordable for many low-income families." *Id.* Second, the eligibility criteria itself is set at 60% of area median income, which is "well above income limits that govern eligibility for occupants of traditional public housing developments." *Id.* Traditional public housing developments set the eligibility cut off at 30% of area median income. At least one study, published in 1995, found that only 28% of LIHTC residents had income below 50% of AMGI (HUD's threshold for identifying "very

Moreover, some researchers have observed that crowd-out occurs at a higher rate in neighborhoods that are gentrifying, suggesting that the private-market is more likely to produce unsubsidized affordable housing in such areas.[148]

Developers do often site projects in neighborhoods that subsequently gentrify.[149] A recent study of Philadelphia found that 33.2% of LIHTC properties in the city that entered service between 1990 and 2000 were in census tracts that subsequently gentrified.[150] To the extent that LIHTC properties are sited in gentrifying areas that experience higher than average crowd-out rates, the efficacy of the LIHTC to increase the supply of affordable housing is further undermined. These studies cast serious doubt on how well the LIHTC advances its primary goal of increasing the supply of affordable housing.

2. Social Costs Outweigh Gains in Property Value

The second goal of the LIHTC program is to produce positive externalities in areas of concentrated disadvantage through place-based investment.[151] High-poverty areas are plagued by a long list of social and economic disadvantages, including but not limited to: lower political influence, lower-quality public services and schools, a weak economic base, ineffective policing, gang activity and other crime, violence, teenage childbearing, high dropout rates, poor community health, joblessness, homelessness, and blight.[152] Proponents of place-based investment programs believe that

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low-income families"), as compared to 81% of residents of the traditional public housing developments that predated the LIHTC. *Id.* at 955. However, this finding is at odds with a more recent HUD report on LIHTC tenants. U.S. DEP'T OF HOUS. & URBAN DEV., DATA ON TENANTS IN LIHTC UNITS AS OF DECEMBER 31, 2013 (2016), https://www.huduser.gov/portal/sites/default/files/pdf/LIHTC-Tenants-2013.pdf [https://perma.cc/QX3Z-PFY4]. The HUD report estimated that about half of LIHTC units are occupied by tenants who earn thirty percent or less of the area median gross income, despite the fact that the tax rules only require rents to be set based on incomes at fifty or sixty percent of AMGI. *Id.* at 19–20. This means that many LIHTC tenants may be required to pay well over thirty percent of their income in rent. All other housing assistance programs cap the amount of rent for which a tenant is responsible at thirty percent of the tenant's actual income. The LIHTC has no such restriction, as the rent limits are based off of AMGI instead of tenants' individual income levels. In fact, over half of the roughly 45% of tenants who earn 30% or less AMGI pay about 55% of their income in rent. *Id.* Other housing assistance programs can be used to help fill the gap.

148. Baum-Snow & Marion, *supra* note 118, at 665.

149. *Id.* at 657 (noting that "whether locating in a qualified tract or not, developers will still find it to their advantage to locate in gentrifying areas").

150. Field, *supra* note 48, at 21.

151. SHARKEY, *supra* note 1, at 172. The investment approach contrasts to what Sharkey calls the "mobility approach," which aims to decrease concentrations of disadvantage by moving people away from areas with concentrated poverty. Sharkey favors a combination approach that emphasizes investment in low-income areas and also incorporates targeted mobility programs. For example, Sharkey supports the demolition and reduced investment in high-rise style low income housing, which he would replace with mixed-income housing options to be used by individuals identified as most likely to benefit from relocation.

152. *Id.* at 179.

government investment can help reduce these problems and will have a positive economic impact on such communities.[153] One housing advocate has argued at an NYU Law School forum that the LIHTC promotes services and community benefits through its place-based housing program[154]:

> [W]e shouldn't overlook the fact that the housing credit has an anti-poverty impact that goes well beyond the number of apartments built. The credit spurs considerable economic development that engages the private market in places long starved for capital. It lays the groundwork for new businesses, health centers, schools, parks, and jobs. Because of this broad reach, a dollar of LIHTC capital typically has a much greater impact in low-income areas than it does in other places. It isn't just residents of these projects that benefit—so, too, do nearby neighbors and business owners in low-income areas.[155]

This observation is an anecdotal account of the external benefits experienced by communities when LIHTC properties are in low-income areas. Though this view does have some support in the empirical literature, the empirical work in this area has focused almost entirely on the effect of LIHTC properties on surrounding property values.[156]

For example, one group of researchers looked at the extent to which positive externalities were generated by place-based housing investments in New York City.[157] They found that the magnitude of external benefits from place-based housing investment was "substantial" overall but observed that positive externalities were greatest "in the more distressed neighborhoods."[158] The primary benefit observed was the

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153. *Id.* (attributing these social problems to "decades of shortsighted policies, intentional efforts to isolate or exclude minority communities within cities, and major demographic shifts" and arguing that there is "good reason to believe that if the pattern of disinvestment in urban neighborhoods were mitigated or reversed, some level of economic and racial integration would follow"). In adopting the place-based investment approach, Sharkey has emphasized investment in services for adults (e.g., job assistance) and children (e.g., quality child care and early childhood education programs), and he has deemphasized the role of large housing projects as beneficial for this purpose. *Id.* at 184–94. Sharkey generally opposes affordable housing strategies that constrain families from leaving high-poverty areas. *Id.* at 174.

154. Denise Scott, *Building More than Housing*, NYU FURMAN CTR.: THE DREAM REVISITED (June 2015), http://furmancenter.org/research/iri/essay/building-more-than-housing [https://perma.cc/PUB9-NRHJ].

155. *Id.*

156. *See, e.g.*, Baum-Snow & Marion, *supra* note 118; Amy Ellen Schwartz, Ingrid Gould Ellen, Ioan Voicu & Michael H. Schill, *The External Effects of Place-Based Subsidized Housing*, 36 REGIONAL SCI. URB. ECON. 679 (2006). Schwartz et al. noted, however, that "[u]ntil recently, empirical research has failed to provide persuasive evidence that investments in affordable housing can generate positive spillover effects." Schwartz et al., *supra*, at 683.

157. Schwartz et al., *supra* note 156.

158. *Id.* at 703. Schwartz et al. attributed the positive externalities to the mitigation of negative externalities associated with inadequate housing. *Id.* In this respect, the mechanism by which affordable housing produces positive externalities is similar to how renewable

"increase[] in property values in the vicinity of the investment."[159] These findings were consistent with those subsequently observed in the LIHTC context.[160] For example, the creation of LIHTC-financed units in a neighborhood is sometimes associated with an increase in surrounding home prices.[161]

This effect is most likely to take place in very low-value areas (as opposed to gentrifying or high-value areas).[162] For example, constructing a new LIHTC project in higher income areas like the Fox Chase/Burlholme neighborhood in Philadelphia probably will not provide a boost to the neighborhood, but constructing that same project in a poor neighborhood like Mantua might produce some positive external value. In other words, targeting housing investments to high-poverty areas may in fact produce economic benefits that improve those neighborhoods.

These studies have two important implications. First, they cast doubt on any optimism over the fact that some cities, like Philadelphia, seem to have a large number of LIHTC properties in gentrifying areas. It is tempting to view this fact as a positive—even a sign that the LIHTC program is working. But this Article had already set forth two reasons why such optimism may be misplaced. First, as noted in Part II, gentrification often does not lead to integration, even in cases when the low-income tenants can continue to live in their rental units. Second, Part IV.A.1 explained that the rate of crowd-out may be highest in gentrifying areas, suggesting that the LIHTC program is not needed to produce comparable rental housing in those areas. And now there is a third reason to be skeptical: there are fewer positive externalities associated with LIHTC properties located in gentrifying areas.

Second, these studies suggest that the greatest gains—in both externalities and supply—can be achieved not only by continuing to target poor areas but also by targeting nongentrifying poor areas even more closely than they are targeted under current law. However, this conclusion should be questioned. The studies that have provided the strongest empirical support for this type of place-based investment strategy—studies that measure positive effects on surrounding property values—have limited their focus on the neighborhood rather than the low-income tenants

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energy theoretically produces positive externalities. *See* Layser, *supra* note 19, at 465–67 (explaining that wind energy produces positive externalities by displacing emission-producing fossil fuel sources to mitigate the effects of negative externalities associated with traditional energy).

159. Schwartz et al., *supra* note 156, at 703.

160. *See generally* Rebecca Diamond & Tim McQuade, Who Wants Affordable Housing in Their Backyard? An Equilibrium Analysis of Low Income Property Development 1 (Dec. 2017) (unpublished manuscript), https://web.stanford.edu/~diamondr/LIHTC_spillovers.pdf [https://perma.cc/GP86-YNCC].

161. Diamond & McQuade, *supra* note 160, at 15; *see also* FREEMAN, *supra* note 26, at 8–9; Baum-Snow & Marion, *supra* note 118, at 663;.

162. Baum-Snow & Marion, *supra* note 118, at 664 (explaining that the "effect of LIHTC units may be a function of neighborhood trajectory," where nongentrifying low-income neighborhoods have some economic gains due to LIHTC properties and on the other hand, gentrifying neighborhoods experienced some economic loss). Baum-Snow and Marion also observed some increased property values in gentrifying areas, but they hypothesized that those increases may reflect expected future values of the property once the units become market-rate housing—not the affordable housing units itself. *Id.*

themselves.[163] Relatedly, a significant body of literature suggests that low-income tenants benefit most when their housing options are not restricted to high-poverty locations.[164] In short, the social costs associated with restricted housing choice and segregated communities are very high.

For those who are more concerned about humanitarian crises than property values, the argument that the LIHTC should target even more projects to very-low income areas to maximize home values (or to minimize adverse effects on home values) is unpersuasive. This is especially true if the LIHTC program not only targets very-low income neighborhoods, but also helps to keep those neighborhoods segregated as I have argued. In sum, the benefits reaped under the current LIHTC program are uncertain, but the case for LIHTC reform is strong. Part V will consider reform proposals to promote integration by expanding low-income tenant housing choice. But first, the remainder of this Part will again ask whether a strong case against reform can be made—this time focusing on the mortgage interest deduction.

B. Investing in High-Income Neighborhoods through the Mortgage Interest Deduction

As described in Part I, unlike the LIHTC, which disproportionately flows to disadvantaged neighborhoods, mortgage interest deduction benefits flow almost entirely into wealthy, disproportionately suburban neighborhoods. These are neighborhoods with high proportions of homeownership, large houses, and high-income residents.[165] Given what we know about the demographic that claims the mortgage interest deduction—and where those taxpayers live—the mortgage interest deduction can be conceptualized as a targeted investment in wealthy neighborhoods, which are often located in suburbs, through subsidized homeownership.

The idea of targeting a housing subsidy to wealthy neighborhoods would strike many people as indefensible, particularly in light of the severe housing burdens experienced by many lower- and middle-income Americans.[166] Tax professor Edward Zelinsky has explained that there may be at least one defense for the practice: to

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163. Lance Freeman & Hilary Botein, *Subsidized Housing and Neighborhood Impacts: A Theoretical Discussion and Review of the Evidence*, 16 J. PLAN. LITERATURE 359, 375 (2002) (noting that the "evaluation of the impacts of siting subsidized housing on neighborhoods does not consider fully the impacts on perhaps the most important constituency—residents of subsidized housing").

164. *See, e.g.*, Cassidy et al., *supra* note 5, at 78–79; Kirk McClure, *Deconcentrating Poverty with Housing Programs*, 74 J. AM. PLAN. ASS'N 90, 90–99 (2008); Sean F. Reardon & Kendra Bischoff, *Income Inequality and Income Segregation*, 116 AM. J. SOC. 1092, 1093 (2011).

165. *See* Phyllis C. Taite, *Taxes, the Problem and Solution: A Model for Vanishing Deductions and Exclusions for Residence-Based Tax*, 59 N.Y.L. SCH. L. REV. 361 (2014).

166. CONG. BUDGET OFF., FEDERAL HOUSING ASSISTANCE FOR LOW-INCOME HOUSEHOLDS 10 (2015), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50782-lowincomehousing-onecolumn.pdf [https://perma.cc/LNN7-NFYQ] (reporting that roughly 20 million American households are eligible for housing assistance, but nearly 75% of those households do not currently receive it. That number does not include the homeless population).

promote economic efficiency.[167] Place-based investment in wealthy neighborhoods may be justified on efficiency grounds if homeownership produces positive externalities, those externalities rise in value as income levels rise, and a subsidy is required to achieve the optimal amount of housing consumption in those higher-income areas.[168] This Part will consider the evidence in support of these three assumptions.

1. Positive Externalities from Homeownership Decline at High Income Levels

In theory, homeownership may produce positive externalities by encouraging neighborhood residents to maintain the quality and appearance of their homes, by positively influencing the neighborhood youth, or by encouraging citizen engagement.[169] All three theories have been debated in the literature and empirically tested.[170] While there is evidence that homeownership produces at least some positive externalities, the results have been mixed, and it has been difficult to distinguish between correlation and causation when assessing the neighborhood effects of homeownership.[171]

However, one recent study concluded that "an increase in neighborhood homeownership rate does cause an increase in neighborhood housing prices," indicating that homeownership may create at least some positive externalities.[172] Applying their findings to a hypothetical eleven-house neighborhood and a typical $90,000 property, the authors estimated that every home purchased as a result of a housing subsidy

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167. Edward A. Zelinsky, *Efficiency and Income Taxes: The Rehabilitation of Tax Incentives*, 64 TEX. L. REV. 973, 1025 (1986).

168. One may alternatively justify support of homeownership on the basis of private benefit to homeowners, but economists disfavor public intervention in the absence of externalities or other market inefficiencies. *See* N. Edward Coulson & Herman Li, *Measuring the External Benefits of Homeownership*, 77 J. URB. ECON. 57, 57 (2013) ("The justification for the tax treatment of housing, or any subsidization of ownership should not rest on its status as a merit good—that ownership is part of the 'American Dream' and thus 'should' be accessible to any household—but with the more compelling justification that ownership creates external benefits; that ownership not only creates private benefits, but also benefits for the neighborhood and broader community.").

169. Donald R. Haurin, Robert D. Dietz & Bruce A. Weinberg, The Impact of Neighborhood Homeownership Rates: A Review of The Theoretical and Empirical Literature 1 (March 6, 2002) (unpublished manuscript), https://papers.ssrn.com/abstract=452000 [https://perma.cc/6WFP-YNQR]. Over the past two decades, numerous social scientists and economists have studied the "neighborhood effects" of homeownership. *Id.* at 21; *see also* Coulson & Li, *supra* note 168, at 57–58. A neighborhood effect is, roughly speaking, an externality that "occurs when an individual's or household's characteristics or actions affect their neighbors' behaviors or socioeconomic outcomes." Haurin et al., *supra*, at 4.

170. Edward L. Glaeser & Jesse M. Shapiro, *The Benefits of the Home Mortgage Interest Deduction* (Nat'l Bureau of Econ. Research, Working Paper No. 9284, 2002), http://www.nber.org/papers/w9284 [https://perma.cc/D47Q-8BUU].

171. Coulson & Li, *supra* note 168; Haurin et al., *supra* note 169; *see also* Glaeser & Shapiro, *supra* note 170 (reviewing the literature and concluding that the "evidence is weak but suggestive" of the presence of homeownership externalities).

172. Coulson & Li, *supra* note 168, at 65.

would yield an annuity of approximately $1327 per year in positive externalities.[173] In such a case, the mortgage interest deduction may be justified on the basis of positive neighborhood effects—but only if those positive externalities outweigh the sizeable deadweight loss observed in connection with the subsidy.[174]

Here, the authors cited earlier estimates about the amount of deadweight loss caused by overconsumption of housing at different income levels.[175] They concluded that the hypothetical example suggests "the benefits from that marginal owner outweigh the deadweight loss of the deduction for all but the highest income households."[176] As such, the study provides evidence in support of the assumption that

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173. *Id.*

174. *Id.*

175. *Id.*; James M. Poterba, *Taxation and Housing: Old Questions, New Answers*, 82 AM. ECON. REV. 237 (1992). For a summary of the evidence and arguments related to the proposition that the mortgage interest deduction incentivizes overconsumption of housing, see Glaeser & Shapiro, *supra* note 170. Poterba concluded that the annual deadweight loss due to overconsumption of housing incentivized by the mortgage interest deduction was valued (in 1990 dollars) as follows: $53 per taxpayer with $30,000 of annual income; $326 per taxpayer with $50,000 of annual income; and $1631 per taxpayers with $250,000 of annual income. *See* Poterba, *supra*.

176. Coulson & Li, *supra* note 168, at 65. Even if the hypothetical was representative and Poterba's deadweight loss estimates were correct, it would be hard to say with certainty that the conclusion—that the benefits of the subsidy would outweigh its costs for all but the highest income households—actually follows from this data. Poterba's income bands leave a wide gap between the $50,000 earner and the $250,000 earner (about $90,500 to $452,800 in 2014 dollars), and unfortunately almost half of taxpayers claiming the mortgage interest deduction fall within that band. *CPI Inflation Calculator*, BUREAU OF LAB. STAT., http://www.bls.gov/data/inflation_calculator.htm [https://perma.cc/PJS6-AF4Z]. In 2014, approximately 47.3% of mortgage interest deductions were claimed by taxpayers with $100,000 or more income. In other words, the analysis suggests that at some unknown point between $50,000 and $250,000 in 1990 income, the deadweight loss must outweigh the benefits of the subsidy, but almost half of deduction-claiming taxpayers have incomes in or above that range. Joel Slemrod, Shlomo Yitzhaki, and David Schizer have argued that a subsidy should discontinue once the marginal cost of funds (deadweight loss at the margin) exceeds the marginal benefits from the subsidy. Joel Slemrod & Shlomo Yitzhaki, *Integrating Expenditure and Tax Decisions: The Marginal Cost of Funds and the Marginal Benefit of Projects*, 54 NAT'L. TAX J. 189 (2001); David M. Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275, 289 (2014). As such, the conclusion that the subsidy's benefits likely outweigh the deadweight loss for all but the highest income earners may overstate the success of the subsidy because the highest income earners constitute a significant part of the mortgage interest deduction-claiming population. Furthermore, Coulson and Li's analysis failed to take into account the offsetting effect of negative externalities produced by the mortgage interest deduction. Tax professor Roberta Mann and economist Edward Glaeser have both argued that significant environmental and social costs are associated with the homeownership in the suburbs that receive a significant portion of the mortgage interest deduction benefits. Edward L. Glaeser, *Rethinking the Federal Bias Toward Homeownership*, 13 CITYSCAPE: J. POL'Y DEV. & RES. 5 (2011); Mann, *supra* note 15, at 1373–78. Mann has argued that the urban sprawl encouraged by the mortgage interest deduction is associated with habitat loss, loss of farmland, and increased pollution. Mann, *supra* note 15, at 1373–75. In addition, she argues that "[s]prawl drains urban communities of funds and life" when upper- and middle-class families leave city centers for suburbia, resulting in racial and ethnic segregation. *Id.* at 1376–78. Glaeser has cited similar negative

homeownership produces externalities, but it also implies that the net value of those externalities varies by home value and tapers off at high income levels. Since the mortgage interest deduction is disproportionately claimed by taxpayers with high incomes, these studies cast doubt about its efficacy.

2. Negative Externalities Outweigh Positive Externalities Associated with Home Consumption

There is also some evidence that positive externalities from increased consumption—as opposed to an initial homeownership decision—might rise with income level, thereby supporting the second assumption.[177] The authors conceded that "[i]n principle, these estimates could justify exactly the subsidy we see in practice: a generous housing subsidy oriented toward the top of the income distribution."[178] The distinction between the initial homeownership decision and the level of consumption is important.[179] There is little evidence that the mortgage interest deduction influences initial decisions about whether to buy a home; however, there is evidence that the mortgage interest deduction may induce homebuyers to purchase homes that are bigger or more expensive than they would otherwise purchase.[180] If a subsidy is needed to increase home consumption, and if the positive externalities from increased home consumption increase with income level, then there may be a case for maintaining the mortgage interest deduction in its current form.[181]

Nevertheless, the authors expressed strong reservations about this conclusion, citing methodological limitations, and they highlighted several possible negative effects that may result from targeting the mortgage interest deduction to high-income communities.[182] As was the case in the LIHTC context, there are reasons to reject the

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externalities and attributed many of these costs to single-family dwellings, wherever located, but he did note that traffic-related costs are higher when housing is located in the suburbs. Glaeser, *supra*, at 22. These negative externalities function to offset positive externalities generated by homeownership and further reduce the value of the subsidy.

177. Glaeser & Shapiro, *supra* note 170, at 16 ("If the evidence suggests large externalities [from housing consumption], particularly among the rich, then there may be a case for subsidizing the housing consumption of this group through the home mortgage interest deduction.").

178. *Id.* at 18.

179. *Id.* The question of optimal level of consumption is distinct from the question of whether homeownership (as compared to nonhomeownership) produces externalities. *Id.* As such, for the purpose of the present inquiry, it is irrelevant that there is little evidence that the mortgage interest deduction induces homeownership at any income level, let alone at high income levels. *See* Mann, *supra* note 15, at 1385 (reviewing international data about homeownership in countries with and without subsidies comparable to the mortgage interest deduction and concluded that the data suggests that the deduction "does not necessarily impact homeownership rates"); Glaeser & Shapiro, *supra* note 170, at 41 (reviewing the literature and data on cross-state comparisons to understand how mortgage interest subsidies differ by state and concluded that the "impact on the homeownership rate appears to be minimal"); Morrow, *supra* note 102, at 762.

180. *See generally* Albouy & Hanson, *supra* note 91.

181. Glaeser & Shapiro, *supra* note 170, at 16.

182. *Id.* at 18 ("Still, we believe that these results are sufficiently riddled with omitted

current spatial distribution of benefits despite the limited evidence in support of the status quo. First, large homes and suburban homes are associated with a range of negative externalities, from high energy usage in homes, to pollution and other economic losses caused by increased commuter traffic.[183] These negative externalities at least partially offset the modest positive externalities observed by the studies discussed.

Second, the deduction may encourage disproportionate spending on housing for the wealthy, displacing spending on the poor. This objection is more than a statement about distributive justice in a world of limited resources; it is also an economic argument based on the theory of declining marginal utility.[184] Every dollar invested in a high-income neighborhood to increase welfare in a wealthy community is a dollar not invested in a low-income neighborhood where that same dollar could have greater impact.

Finally, the deduction may lead to social problems, including "incentives for the rich to live in fancier neighborhoods, which invariably means that the rich will tend to segregate more."[185] While the benefits of the mortgage interest deduction are uncertain, the dangers of segregation are real—and this Article has shown that the potential for the mortgage interest deduction to reinforce and reward segregation is compounded by the effects of the LIHTC, and vice versa. For this reason, Part V will advocate for comprehensive reform of both programs.

V. REFORMING TAX-BASED HOUSING SUBSIDIES

A. New Reasons To Reform Tax-Based Housing Subsidies

A growing body of literature asks how tax systems contribute to widening economic and social inequalities in America. There are several ways this basic question can be asked, but much of the literature on economic inequality reflects two distinct concerns: concentrations of wealth at the high end of the income scale that help empower a small and disproportionately rich minority of Americans;[186] or the scarcity

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variables problems that we would be loath to accept them without more proof."). *But see* Zelinsky, *supra* note 167, at 1025–26 (stressing the need to remain open to the possibility that economic arguments may favor an upside-down subsidy like the mortgage interest deduction). Zelinsky has argued that if, in theory, blue-collar neighborhoods inhabited by middle-income homeowners are less susceptible to enhancement through the tax system than the property values where high-income taxpayers live, then "it may be desirable to encourage the person living in a half-million dollar home to acquire a second mortgage, improve his property and thereby generate externalities." *Id.* at 1025.

183. Mann, *supra* note 15, at 1370–71.

184. *See* Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417 (1952). Stated differently, a dollar spent in a wealthy neighborhood to achieve modest increases in the value of homes that were already highly valued probably will produce smaller welfare gains than a dollar spent on services for the poor; a dollar simply has more utility to the poor than it does to the rich.

185. Glaeser & Shapiro, *supra* note 170, at 21; *see supra* Part III.

186. *See, e.g.*, Jennifer Bird-Pollan, *Unseating Privilege: Rawls, Equality of Opportunity, and Wealth Transfer Taxation*, 59 WAYNE L. REV. 713 (2013); Alice Gresham Bullock, *Tax Code, the Tax Gap, and Income Inequality: The Middle Class Squeeze*, 53 HOW. L.J. 249

of resources at the low end of the income scale that leaves many Americans in poverty.[187] Within this traditional construct, the mortgage interest deduction has been thoroughly critiqued along the first line of inquiry as an upside-down subsidy that promotes the concentration of wealth by diluting progressivity in the tax system.[188] And the LIHTC has been critiqued along the second line of inquiry as an antipoverty program to help correct economic inequality from the bottom.[189]

This Article has identified a new space where these two lines of inquiry intersect to exacerbate social and economic inequalities. When the mortgage interest deduction and LIHTC are viewed in combination, important new insights can be made. First, Part III demonstrated that the inequities associated with tax-based housing subsidies are even worse than we had realized: the mortgage interest deduction and the LIHTC have potential to reinforce and reward economic and social segregation. Second, Part IV explained that social and economic costs outweigh the uncertain benefits associated with the current spatial distribution of the mortgage interest deduction. Having established a case for reform, this Part will briefly consider several proposals and the challenges they present.

B. Reform the LIHTC Program Through Qualified Allocation Plan Amendments

Ideally, both the LIHTC and mortgage interest deduction laws should be reformed not only to remove the barriers they pose to integration but also to affirmatively promote integration. In the current political environment, this goal would be most easily achieved on the LIHTC side. Some have suggested scaling back federal qualified census tract and difficult development area incentives by making the basis boost

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(2010); Peter Diamond & Emmanuel Saez, *The Case for a Progressive Tax: From Basic Research to Policy Recommendations*, 25 J. ECON. PERSP. 165 (2011); David Gamage, *How Should Governments Promote Distributive Justice?: A Framework for Analyzing the Optimal Choice of Tax Instruments*, 68 TAX L. REV. 1 (2014); Liam Murphy, *Why Does Inequality Matter?: Reflections on the Political Morality of Piketty's* Capital in the Twenty-First Century, 68 TAX L. REV. 613 (2015); Phyllis C. Taite, *Exploding Wealth Inequalities: Does Tax Policy Promote Social Justice or Social Injustice?*, 36 W. NEW ENG. L. REV. 201 (2014).

187. *See, e.g.*, David Kamin, *Reducing Poverty, Not Inequality: What Changes in the Tax System Can Achieve*, 66 TAX L. REV. 593 (2013); Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791 (2014); Eric M. Zolt, *Inequality in America: Challenges for Tax and Spending Policies*, 66 TAX L. REV. 641 (2013).

188. *See* Phyllis C. Taite, *Taxes, the Problem and Solution: A Model for Vanishing Deductions and Exclusions for Residence-Based Tax Preferences*, 59 N.Y.L. SCH. L. REV. 361 (2014) (urging policymakers to adopt policies that reverse regressive tax preferences including housing-related tax preferences like the MID, capital gains exclusion and property tax deduction). Taite emphasized that current policies "contribute to the wealth and income inequality that disadvantage the poor and middle class in favor of the wealthy." Taite, *supra* note 186, at 202. Among the reforms were a one-time refundable home buying credit and a scaled-back MID available only to certain middle-income persons. *See* Bullock, *supra* note 186 (pointing to regressive tax subsidies like the housing tax subsidies as examples of tax policies that help to maintain the imbalance of political power that disadvantages low and middle-income persons).

189. *E.g.*, Tahk, *supra* note 187.

available solely to projects that are most in need of the extra subsidy.[190] By scaling back the basis boost, proponents hope that fewer projects would be sited in these very low-income areas.[191] However, it is hard to predict whether merely scaling back the basis boosts would meaningfully change the spatial distribution of LIHTC properties. A more promising approach is to reform the law through state-level administrative changes that give low-income tenants more opportunities to live in integrated areas. Both proposals are explored more fully below.

1. Uncertain Effect of Scaling Back the Basis Boost Provisions

As was explained in Part IV, there is some indication that a nontrivial number of projects built in high-poverty areas would be built even without the LIHTC, especially if developers anticipate future gentrification of the area[192]—and if those projects would be built in such areas without any credit at all, it seems reasonable to expect them to be built in those same areas without any basis boosts. In other words, it is hard to gauge how much of the current distribution of LIHTC properties can be attributed to the qualified census tract and difficult development area basis boost provisions as opposed to developers' independent cost-benefit analysis. And though it seems likely that removing the extra incentive to develop projects in low-income areas would help some, further changes would probably be needed to affirmatively incentivize development of projects that promote residential integration.

2. Promoting Integration Through Qualified Allocation Plans

One of the most promising ways to affirmatively incentivize projects that promote residential integration is to follow models that have already begun to emerge under state law as states amend their qualified allocation plans to promote a wider range of affordable housing options for low-income tenants. During the recent financial crisis, Congress adopted the Housing and Economic Recovery Act of 2008, which authorized states to extend the difficult development area basis boost to a greater variety of projects.[193] Several states have incorporated specific locational criteria in their eligibility requirements for the basis boost authorized by the Act.[194]

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190. *See, e.g.*, Baum-Snow & Marion, *supra* note 118.

191. *Id.*

192. *See supra* Part IV.A.1.

193. Pub. L. 110-289, 122 Stat. 2654 § 3003. The Act provided that state housing agencies could designate "any building" as requiring the larger subsidy, and such building would be treated "as located in a difficult development area" if necessary to make a project "financially feasible." I.R.C. § 42(d)(5)(B)(v) (West 2011 & Supp. 2017). The district court in *Inclusive Communities* noted that "[b]efore the enactment of [the Housing and Economic Recovery Act of 2008 HERA)], states were limited to awarding 30% basis boosts only to developments located in qualified census tracts or difficult development areas. But after HERA, states were permitted to choose the developments to receive the boost." Inclusive Cmtys. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs, 860 F. Supp. 2d 312, 324 (N.D. Tex. 2012).

194. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 112, at 4 ("[M]any states used locational criteria in determining eligibility for the [Housing and Economic Recovery Act of 2008] basis boost.").

As a result, developers in those states now have incentives to propose projects tailored toward those new eligibility requirements in addition to the traditional qualified census tract and difficult development area eligibility requirements.[195] In addition, several states have amended their prioritization criteria to give greater weight to higher quality areas. Early research on the effects of these changes suggests that they are effective at changing the spatial distribution of LIHTC properties.[196] These examples not only lend support to the hypothesis that states' prioritization rules and the qualified census tract and difficult development area basis boost provisions have influenced the distribution in the past but also suggests a path forward that can increase housing options for low-income tenants.

For example, Texas was among the states that used locational criteria to determine eligibility for the basis boost authorized under the Housing and Economic Recovery Act of 2008. The state amended its qualified allocation plan to define "high opportunity areas" eligible for the increased subsidy as areas with good public transportation, quality schools, higher income, and low poverty.[197] During the litigation of *Inclusive Communities*, the Texas housing authority told the court that the change was "likely to have a positive effect in increasing the number of LIHTC developments in [high opportunity areas]."[198] The state's prediction was later confirmed by HUD research findings that Texas "saw increases in the share of units built in low poverty neighborhoods."[199]

Meanwhile, New Jersey was among the states that amended their prioritization criteria. The state amended its prioritization criteria to emphasize higher-opportunity neighborhoods and dedicated roughly 60% of the state's available credits to such projects.[200] At the time of the lawsuit, only 12% of New Jersey's LIHTC properties were placed in low-poverty areas.[201] By 2013, 47% of LIHTC allocations were to projects in low-poverty neighborhoods, a rise that has been attributed to the changes.[202] An alternative approach adopted by several states in their qualified allocation plans has been to increase prioritization of projects associated with certain amenities, such as quality transit or distance from environmental hazards.[203]

The trend among state housing authorities toward creating incentives for affordable housing development in lower-poverty, higher-opportunity areas reflects a shift away from the uncertain, place-based investment approach to LIHTC policy described in Part IV toward an approach that emphasizes housing choice. As more

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195. For more on states' responses to the Housing and Economic Recovery Act of 2008, see Part III.B.

196. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 112.

197. Inclusive Cmtys. Project, 860 F. Supp. 2d at 325.

198. *Id.* (alteration in original).

199. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 112, at 14.

200. *Id.* Similarly, Massachusetts now allocates extra prioritization points to projects developed in an "opportunity area." *Id.* at 7. Mississippi has shifted from a model that "provided the most points for development in the most impoverished counties" to a model that provides the most points to "developments in counties that [have] the highest per capita incomes." *Id.* at 8.

201. *Id.* at 23.

202. *Id.*

203. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 112, at 8.

LIHTC properties are built in lower poverty areas, low-income tenants (including those who participate in tenant voucher programs) will have greater flexibility to choose the type of neighborhood that suits their preferences. These changes also have the potential to reduce the extent to which the LIHTC program contributes to racial and economic segregation in many cities.

The early results of state-level qualified allocation plan amendments have been encouraging.[204] Nevertheless, some caution is in order. Under current law, many LIHTC property tenants lack housing options and are therefore restricted in their residential mobility; however, if reformed policies result in the disproportionate siting of LIHTC properties in low-poverty areas, such policies may resemble forced-resettlement programs. Most housing and urban planning experts reject policies that rely on forced resettlement.[205] States should take care to design programs that maximize tenants' locational choices, as there is at least some risk that the pendulum could swing too far in the other direction.

Nevertheless, widespread adoption of similar qualified allocation plan provisions may help promote more integrated communities in metropolitan areas. Ideally, the federal tax law would be amended to more fully embrace the approach that has been tested at the state level, either to require states to take neighborhood quality into account as part of their selection criteria or to guarantee basis-boost eligibility for projects located in such areas.[206] Practically speaking, however, it seems unlikely in the current political climate that Congress or the IRS will make these changes. For this reason, state lawmakers and housing authorities should take care to review state qualified allocation plans and revise them as needed to affirmatively promote development of affordable housing in low-poverty areas even in the absence of a federal mandate. Qualified allocation plan changes that are explicitly race-conscious may trigger strict scrutiny if challenged,[207] but race-neutral policies that promote income integration should not.

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204. *Id.*

205. *See, e.g.*, Cassidy et al., *supra* note 5, at 79.

206. As explained in Part III, nothing in federal law requires states to make such changes. The Housing and Economic Recovery Act of 2008 itself is location-neutral and would not be expected to produce mobility effects unless states specifically include locational criteria in the eligibility requirements. And although the tax code requires states to include project location among its project selection criteria for prioritization, neither the statute nor regulations elaborate on the requirement. I.R.C. § 42(m)(1)(C) (Westlaw through Pub. L. No. 115-140). The discretion left to states to administer the LIHTC reflects the assumption that state housing authorities know more about their states' housing needs than either Congress or the IRS, and it permits greater flexibility for states to address states-specific challenges. Callison, *supra* note 20, at 230–31 (describing the program in terms of cooperative federalism). Still, in this case the discretion presents challenges for a federal response to a problem that crosses state borders.

207. The Supreme Court has held that remedying the effects of past segregation does not pass strict scrutiny in cases where past segregation was not mandated by law. *See* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007) (applying strict scrutiny to invalidate a school assignment plan that included racial criteria where the school district in question was never segregated by law or subject to court-ordered desegregation). In this case, the tax law does not mandate segregation but merely includes features that may encourage segregation.

C. Replace the Mortgage Interest Deduction with a Refundable Tax Credit

Meanwhile, the potential for the mortgage interest deduction to reinforce segregation must also be acknowledged and taken seriously if we are to remove all barriers to integration presented by these tax laws. The ideas set forth in Part III may strike some as fanciful. After all, one might expect the mortgage interest deduction to promote residential stability though homeownership, not to encourage White-flight through economic incentives. Once a person owns a home, he or she is less likely to move and more likely to maintain the property and participate in the local community.

However, there are at least two reasons why the stabilizing effect of homeownership is not necessarily inconsistent with the claims made in this Article. First, the impact on mobility discussed here refers to the expanded options homebuyers may have, thanks to the deduction, combined with specific incentives to choose some home locations over others. When choosing a neighborhood, homebuyers routinely weigh the cost of housing against a variety of factors that will contribute to their quality of life,[208] and to the extent that the mortgage interest deduction alters that balance, it has the potential to influence decisions about location. This is especially true if homebuyers overestimate the value of the mortgage interest deduction, which they often do.[209]

Second, to the extent that the mortgage interest deduction does successfully promote residential stability by encouraging people to choose a living arrangement that restricts further mobility, it may act to make those location decisions permanent.[210] No one would reasonably expect the mortgage interest deduction to spur a mass migration from cities to suburbs, but if individual households with similar demographics tend to move to the same neighborhoods and then stop moving, then the aggregate result over time may be more segregated communities. Reform is needed to prevent these results. This section will look at two categories of reform. The first would rely on a partial repeal of the deduction, and the second would fully repeal the deduction and replace it with a credit.

1. Uncertain Impact of a Partial Repeal of the Mortgage Interest Deduction

A mere repeal of the mortgage interest deduction (or a partial repeal, such as the recent scale-back through the TCJA[211]) probably would not be enough to remedy

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208. *See* EILLI THOMAS, ILONA SERWICKA & PAUL SWINNEY, CTR. FOR CITIES, URBAN DEMOGRAPHICS: WHY PEOPLE LIVE WHERE THEY DO (2015), http://www.centreforcities.org/wp-content/uploads/2015/11/15-11-02-Urban-Demographics.pdf [https://perma.cc/5LHJ-88JP].

209. Kathleen Pender, *Mortgage Interest Deduction Claims, Facts*, SFGATE (Dec. 18, 2012, 8:39 PM), http://www.sfgate.com/business/networth/article/Mortgage-interest-deduction-claims-facts-4129555.php [https://perma.cc/M3SA-GDU6] (quoting Prof. Dennis Ventry).

210. Callison, *supra* note 20, at 222 (noting that "[h]ousing patterns have a tendency to remain stable due to the fact that individual housing choices are made relatively infrequently" and, as a result, the effects of past government actions continue to be seen in present patterns of housing).

211. *See infra note* 213.

past harm.[212] To be sure, eliminating the mortgage interest deduction would have an immediate benefit of eliminating a subsidy that disproportionately benefits wealthy homeowners and would potentially free up to $84 billion a year of resource that could be redistributed for other purposes. It would also remove the barriers to integration and homeownership discussed in Part III.A. These changes would be a step in the right direction, but they would not affirmatively promote integrated communities.[213]

One of the more provocative proposals for affirmatively promoting integration through mortgage interest deduction reform would limit access to the mortgage interest deduction to integrated neighborhoods. Tax professor Dorothy Brown has asked: "Why don't we say no one gets a mortgage interest deduction unless they live in an integrated neighborhood? . . . We realize you're taking a penalty in the market, and we want to compensate you by lowering your taxes."[214] Similarly, law professor John Charles Boger has suggested that the mortgage interest deduction be progressively withdrawn from municipalities that fail to assume their "'fair share' of racially and economically integrated housing."[215] Reforms like these would seize on the mobility effects of the deduction by making the value entirely contingent on moving to

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212. Many tax academics and economists have called for the mortgage interest deduction to be repealed and replaced. *See, e.g.*, Mann, *supra* note 15, at 1393; Morrow, *supra* note 102, at 799; Ventry, *supra* note 12, at 282–83.

213. The TCJA significantly scaled back the mortgage interest deduction in two ways. First, under prior law, interest on residential mortgages (and home equity loans) up to $1,000,000 were deductible. I.R.C. § 163(h)(3)(E) (Westlaw through Pub. L. No. 115-140). Now, interest may only be deducted on mortgages up to $750,000, and interest on home equity loans is no longer deductible. I.R.C. § 163(h)(3)(F)(i). Second, under prior law the standard deduction was $6350 for individuals and $12,700 for taxpayers who were married filing jointly. Rev. Proc. 2016-55, 2016-45 I.R.B. 707. The TCJA nearly doubled the standard deduction amounts, raising them to $12,000 for individuals and $18,000 for married couples. *See* I.R.C. § 63(c)(7). Taxpayers only itemize their tax returns if the sum of their itemized deductions exceeds the standard deductions, so the number of taxpayers who will itemize is expected to decrease under the new tax law. *See* Sara O'Brien, *Tax Bill Will Slash by Half the Number of Homeowners Using the Mortgage Interest Deduction*, CNBC.com (April 23, 2018) https://www.cnbc.com/2018/04/23/tax-bill-will-slash-the-number-of-homeowners-claiming-the-mortgage-deduction.html [https://perma.cc/KZ55-EBR9] (reporting that the number of itemizers is expected to drop from 46.5 million to 18 million). Since the mortgage interest deduction is an itemized deduction, this change will significantly reduce the number of people who claim it. *See id.* (reporting that a 57% drop in mortgage interest deduction claimants is expected). Together, these changes dramatically scale back the mortgage interest deduction, a change that is certainly a step in the right direction given the problems raised in this Article. Nevertheless, to the extent that the mortgage interest deduction is still available, it should be noted that the changes skew the law in favor of the wealthy, who are in the best position to surpass the standard deduction threshold. Therefore, the observations made in this Article continue to be true under the new law, albeit with respect to a smaller number of taxpayers. Moreover, the partial repeal may remove a barrier to integration, but it does nothing to affirmatively promote it.

214. Emily Badger, *A Radical Idea To Compensate Black Homeowners Harmed by Racial Bias*, WASH. POST. (June 21, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/06/21/homeownership-doesnt-pay-in-black-neighborhoods-heres-how-to-change-that [https://perma.cc/Z5HC-UEXQ].

215. John Charles Boger, *Toward Ending Racial Segregation: A Fair Share Proposal for*

locations that are consistent with integration goals. Complications could arise if the deduction accelerates gentrification, but it may be possible to mitigate some of the more harmful effects of gentrification by compensating those who are affected by rising rental rates or property taxes, for example.

Nevertheless, any partial repeal of the mortgage interest deduction may raise home prices in the newly targeted neighborhoods that cannot adequately absorb the increased demand. Conversely, it may lower the home prices in neighborhoods that are no longer targeted. If specific neighborhoods are designated as qualifying for the deduction, then those neighborhoods would be most likely to experience home price increases due to capitalization.[216] A partial repeal would probably change the spatial distribution of the mortgage interest, but many of the newly targeted neighborhoods would then be vulnerable to price increases due to capitalization.[217] This could not only reduce the effectiveness of the incentive, but it could create a situation in which homebuyers actively avoid the very purchases the tax law intended to incentivize.

2. Benefits of Refundable Housing Tax Credits

Given the potential downside to a partial repeal, I believe a better reform option would be to replace the deduction with a form of tax preference commonly used to deliver tax-based benefits to low-income taxpayers: the refundable tax credit.[218] Refundable tax credits offer a relatively straightforward answer to the problems created by unequal access to the mortgage interest deduction.[219] Because refundable tax credits offset a taxpayer's tax liability on a dollar-for-dollar basis and are not limited by a taxpayer's income, taxpayers at all income levels could be given access to a refundable tax credit—or its availability could be limited entirely to lower- and middle-income homebuyers.

For example, if a taxpayer earned a 25% credit on $4000 of mortgage interest paid, then that taxpayer would earn a $1000 credit. If the taxpayer had $1500 in tax liability, then he or she would owe only $500 after applying the credit. If the taxpayer instead had only $100 in tax liability, then the taxpayer would owe no taxes and would be entitled to a $900 tax refund from the IRS. The credit would be available regardless of whether the taxpayer filed an itemized tax return. This change would make the tax preference widely available to all potential homebuyers, including lower- and middle-income homebuyers that are unable to access the mortgage interest deduction under current law.

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the Next Reconstruction, 71 N.C. L. REV. 1573, 1574, 1608 (1993).

216. *See* Christian A. L. Hilber, *The Economic Implications of House Price Capitalization: A Synthesis* (Spatial Econ. Research Ctr. Paper No. 91, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2620381 [https://perma.cc/V3FT-C59Y]. Capitalization is discussed in Part III.A.

217. *Id.* at 2.

218. *See, e.g.*, I.R.C. § 32 (Westlaw through Pub. L. No. 115-140) (earned income tax credit); I.R.C. § 24 (Westlaw through Pub. L. No. 115-140) (child tax credit).

219. Other tax scholars have also advocated for replacing the mortgage interest deduction with some type of homebuyers' credit. Mann, *supra* note 15, at 1393; Morrow, *supra* note 102, at 799; Ventry, *supra* note 12, at 282–83.

Finally, if the goal is to promote residential integration through tax-based housing policy, then it may be necessary to look beyond homeownership incentives in order to reach the population of renters. The LIHTC subsidizes rental housing, but the subsidy is only available to very low-income tenants. Both major tax-based subsides miss a large segment of the population comprised by middle-income renters. If residential patterns are to be redrawn, then policies must address this group. Several states have experimented with tax preferences for renters. For example, California provides a tax credit for certain renters with low incomes,[220] and Indiana allows all renters (except those who are exempt from Indiana property tax) to deduct up to \$3000 of rental payments.[221] Tax benefits like these help to achieve parity with homeowners who benefit from the mortgage interest deduction. Their effect on mobility would probably be similar to that of the current mortgage interest deduction, however, unless the availability of the tax preference were limited to certain qualified neighborhoods. Again, a refundable credit may be preferable over deductions since it would minimize the adverse effects of capitalization.

The steepest hurdle to enacting the mortgage interest deduction reforms recommended here are political. Although Congress recently scaled back the mortgage interest deduction under the TCJA,[222] proposals to eliminate it entirely continue to be deeply unpopular. Nevertheless, it should be noted that the TCJA indirectly repealed the mortgage interest deduction for more than half of taxpayers who previously claimed it by further limiting the availability of itemized deduction.[223] In other words, rather than expanding access to benefits for lower- and middle-income homebuyers, the mortgage interest deduction was effectively repealed for that group but remains available to higher-income homeowners. On the one hand, making the mortgage interest deduction less available to taxpayers may help mitigate some of the problems discussed in this Article by making the rewards for segregation less available. It should be noted, though, that the partial repeal could expand the number of lower- and middle-income taxpayers who are harmed by the effects of capitalization.

D. Issues Raised by Reform Proposals

That said, a few caveats should be made even with respect to these proposals made in this Article. The first is that human biases and uncertainty about the size of the tax benefit undoubtedly complicate the extent to which the mortgage interest deduction or any reform proposal set forth here may influence actual behavior.[224] The evidence that the mortgage interest deduction influences home purchase decisions, for example, is mixed. Many experts have expressed doubt that the deduction has any impact at all on the initial purchase decision.[225] On the other hand, most experts have concluded that at least some capitalization of the deduction occurs, which suggests that

220. CAL. REV. & TAX. CODE § 17053.5 (West 2010).

221. IND. CODE ANN. § 6-3-2-6 (LexisNexis 2015).

222. *See supra* note 213.

223. *Id.*

224. *See* Morrow, *supra* note 102, at 783–84.

225. *See, e.g.*, Christian A. L. Hilber & Tracy M. Turner, *The Mortgage Interest Deduction and Its Impact on Homeownership Decisions*, 96 REV. ECON. STAT. 618 (2014); Morrow, *supra* note 102, at 793.

the deduction succeeds in increasing demand enough to produce capitalization of the subsidy.[226]

Determining with certainty the extent to which location decisions are affected by the mortgage interest deduction or the LIHTC would be a difficult task, and empirical research would be needed to test the theory. Nevertheless, the spatial patterns of the tax benefits do not suggest that either the mortgage interest deduction or LIHTC, in their current form, encourage integration.[227] Meanwhile, this Article has set forth several reasons to believe that the tax policies could theoretically create incentives for segregation. As such, the uncertainty about the degree of influence these programs have should not be a reason to hesitate to make changes to the law that more effectively promote economic and social integration.

Second, one should not overstate the role of the tax law in the residential patterns that can be observed in America's cities. Nontax law and policies, social preferences, and history have all contributed—in most cases to a much greater degree than any tax law—to the segregation of neighborhoods and conditions in urban (and suburban) areas.[228] Among the most problematic of these are land-use regulations. Pre-Civil Rights Era city planning often included racial zoning laws that segregated White and Black populations.[229] Today, some cities continue to use exclusionary zoning laws "designed to price certain demographics out of particular neighborhoods or jurisdictions, making these locations inaccessible to low-or middle-income individuals."[230] Even the most benign land-use regulations may increase housing costs in a manner that disproportionately burdens low-income households.[231]

Reforming the tax law may help minimize the extent to which tax-based subsidies exacerbate problems caused by land-use regulations. A repeal or partial repeal of the mortgage interest deduction, for example, would most likely lower home prices in many areas where supply is suppressed by land-use regulations.[232] This is because capitalization is most likely to occur when demand outpaces supply, as one would

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226. *See* Hilber, *supra* note 216, at 2–3; Morrow, *supra* note 102, at 768 n.60.

227. Other researchers have drawn similar conclusions with respect to the LIHTC. *See* Callison, *supra* note 20, at 242 (referring to a Brookings report that concluded "these patterns highlight 'the fact that blacks are the most spatially isolated minority group [and] suggest . . . that federal housing programs such as the LIHTC do not mitigate that outcome'" (alteration in original)).

228. CHARLES E. CONNERLY, "THE MOST SEGREGATED CITY IN AMERICA": CITY PLANNING AND CIVIL RIGHTS IN BIRMINGHAM, 1920–1980, at 1 (2005) (noting that "urban planning—particularly through zoning, urban renewal, and public housing—has had a significant impact on where blacks could live and therefore on their freedom to live in decent neighborhoods with good public services"); Callison, *supra* note 20, at 220–21 (pointing to "Euclidian zoning," "redlining," the introduction of interstate highways, and early "urban renewal" programs as responsible for much segregation).

229. CONNERLY, *supra* note 228, at 5; IKEDA & WASHINGTON, *supra* note 105, at 3–5; RICHARD ROTHSTEIN, THE COLOR OF LAW 43–49 (2017).

230. IKEDA & WASHINGTON, *supra* note 105, at 5.

231. *Id.* ("[I]f land-use regulations—including zoning, parking requirements, and aesthetic rules—increase overall housing costs, the burden of these rules falls disproportionately on low-income households that typically dedicate a higher proportion of their income to housing relative to higher-income people.").

232. *See id.* at 6.

expect to see in an area where land-use prevents new residential construction or tall buildings.[233] Nevertheless, reforming the tax law cannot solve all problems associated with land-use restrictions, and in some cases land-use restrictions may even present challenges to tax reform. For example, if many low-poverty neighborhoods prohibit large rental properties, then even the strongest tax incentives to site LIHTC properties in such areas will be unsuccessful. In such cases, further reform of land-use regulations may also be necessary.

Another nontax area ripe for reform is tenant voucher programs. The LIHTC program has a tendency to limit the effectiveness of tenant voucher programs because most non-LIHTC property landlords are free to reject tenant vouchers. Given this authority, they often do reject tenant vouchers—to the detriment of the program. Many states have adopted laws that require landlords to accept tenant vouchers. So far, results have been mixed.[234] The laws are generally regarded by landlords as a violation of their rights. In addition, even when landlords are required to accept tenant vouchers, they remain free to reject an applicant for other reasons that could easily become a pretext to avoid leasing to a low-income tenant.[235]

Finally, it is worth noting that although no court has yet held that a state housing authority must work to promote integrated communities through LIHTC policy, the persistence of segregation patterns a half century after the Civil Rights Act suggests that merely eliminating legal barriers to integration is insufficient to produce meaningful change.[236] But meaningful change must occur if we hope to reverse the trend toward growing economic inequality in America.[237] For this reason, this Article has advocated for reforms that would not only remove barriers to integration that may exist in current tax law but would instead actively promote it. Nevertheless, even a more conservative approach limited to eliminating barriers to inequality would be a step in the right direction.

CONCLUSION

While the benefits of integration can certainly be debated, almost no one argues that segregation helps low-income or minority populations. Nevertheless, de facto economic and racial segregation persists in many urban areas, and those segregated housing patterns are visible in the spatial distribution of tax-based housing subsidies.

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233. *Id.*

234. *Despite Oregon Housing Laws, Some Landlords Still Turn Away Section 8 Tenants*, OR. LIVE (Oct. 19, 2014, 10:37 PM), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2014/10/despite_oregon_housing_laws_so.html [https://perma.cc/DD76-CS4E].

235. *Id.*

236. SHARKEY, *supra* note 1, at 9, 38 (noting the persistence not only of specific segregation patterns over time, but also the stability of neighborhood-type across generations); Callison, *supra* note 20, at 222 (arguing that "the reduction or elimination of governmental segregation-inducing programs will not suffice to desegregate housing").

237. Sharkey observed that White children born after the Civil Rights movement achieve upward economic mobility relative to their parents while their Black counterparts experienced downward economic mobility. SHARKEY, *supra* note 1, at 101. Sharkey argued that the neighborhoods where these populations resided contributed to this result. *Id.* at 107.

This Article began the analysis of the relationship between tax-based housing subsidies and place of residence by considering the impact of the mortgage interest deduction and LIHTC properties on the neighborhoods where they flow. Although this Article focused primarily on urban locations, future research in this area may consider the impact of tax-based housing subsidies on rural regions, which often experience different spatial distributions of benefits than what is observed in cities.

The inadequacies of mortgage interest deduction and LIHTC programs go beyond the mere failure of these tax laws to target subsidies to the right locations given current residential patterns. Both programs may affect people's decisions about where to live, and the potential mobility effects of the mortgage interest deduction and the LIHTC push in opposite directions. As a result, the spatial distribution of tax-based housing subsidies may not merely reflect residential segregation patterns—they have the capacity to reinforce and reward them. Given the extent of the potential harm and its tendency to endure, this Article has argued in favor of affirmative efforts to incentivize economic and racial integration and change the spatial distributions of tax-based housing subsidies.

A full response to the problem of segregation will almost certainly require additional nontax reforms, and it is possible that housing policy will someday be returned entirely to nontax authorities, eliminating the need for tax-based solutions altogether. In the meantime, the significant role the tax law plays in housing policy leaves no option to ignore the impact of tax-based housing subsidies on place of residence. One can imagine a map in which all mortgage interest deduction benefits flow to integrated or integrating neighborhoods and LIHTC properties are found in more middle- and upper-income neighborhoods. That map would look quite different from the ones presented in Part I of this Article. Whether the spatial distribution reflects existing segregation patterns or those reinforced by tax law, these maps are a visible reminder of the inequalities that remain in our tax system and in the nontax social policies it promotes.