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Assessing the Performance of Place-Based Economic Development Incentives: What's the Word on the Street?

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I. Introduction

Designing publicly-funded incentives to attract business investment to distressed communities is a strategy that American governments at all levels have pursued for more than half a century.[1] So-called "community capitalism" puts the forces of enterprise and entrepreneurialism to work in ameliorating poverty, reversing deterioration in low-income communities, and addressing related social ills.[2] Induce investors to come to places they would otherwise avoid and jobs will follow, the fortunes of impoverished residents will improve, the need for governmental aid will decrease, and business owners and investors will be rewarded—it's seemingly a win-win-win! Not surprisingly then, economic development incentives aimed at

† Professor of Law, Case Western Reserve University School of Law. I would like to acknowledge the important contributions to this Article of Elena Barone, David Bauman, Todd Robie, and Chad Weisman, students from the Fall 2022 semester of a course called the Urban Development Lab that I teach at CWRU. Elena, David, Todd, and Chad conducted the qualitative research that formed the basis for Part V of this Article and prepared written reports summarizing their research that I reference frequently in Part V. I also acknowledge the important insight and collaboration of David Ebersole, who co-taught the Fall 2022 Urban Development Lab with me and helped supervise the qualitative research. David served as the Director of Economic Development for the City of Cleveland from 2017 to 2022 and currently serves as Vice President, Development Finance for the Greater Cleveland Partnership. I presented an early-stage template for this research project at the Eighth Annual International and Comparative Urban Law Conference in Vancouver, British Columbia in July 2022. I received helpful feedback from Conference participants which I also now gratefully acknowledge. Last but certainly not least, I thank my long-time friend and colleague Eileen Sullivan, who provided vital editing assistance and valuable feedback on this Article.

1. Michael Snidal & Sandra Newman, *Missed Opportunity: The West Baltimore Opportunity Zones Story*, 24 CITYSCAPE 27, 28 (2022).

2. Community Capitalism is a phrase that gained prominence in the late 1990s in connection with the policy concept that ultimately gave rise to New Markets Tax Credits. *See* Ninety-First American Assembly, *Community Capitalism: Rediscovering the Markets of America's Urban Neighborhoods*, BROOKINGS (Apr. 1, 1997), https://www.brookings.edu/articles/community-capitalism-rediscovering-the-markets-of-americas-urban-neighborhoods/.

revitalizing distressed communities are often popular on both sides of the political aisle.[3]

By and large, however, these types of incentives have yielded mixed results.[4] Many of the studies conducted show place-based economic development incentives yield at most modest benefits to residents of targeted communities.[5] Explanations vary as to why this is so. Incentive-specific studies often point to design flaws (*e.g.,* a particular incentive is too easy to get, too strict, or not well targeted enough to address underlying market failures).[6] Other studies question more generally the soundness of using incentives to attract economic activity to places where the free market does not naturally thrive (*e.g.,* due to a lack of infrastructure or skilled workers).[7]

Presumably, the models of providing these incentives should be improving over time. Advocates of the latest version or newest model often proclaim they have worked out the design flaws of predecessors.[8] In some instances, these newer versions represent modest refinements and in others, substantial overhauls or total about-faces. A persistent problem with any economic development incentive lies in settling on a consistently applied and commonly accepted method of assessing its performance in the distressed community.[9] Especially in urban areas, which are typically made up of many distinct economic submarkets that can vary significantly in demographics, physical features, and histories, it is challenging to accurately measure an incentive's impact.[10] Add to this that it may take years for economic incentives to make an impact and that investment and location decisions by businesses and entrepreneurs are typically driven by

3. An example is the federal Opportunity Zones program. The original bill proposing Opportunity Zones had several Democratic and Republican co-sponsors. Jim Tankersley, *Tucked into the Tax Bill, a Plan to Help Distressed America*, THE N.Y. TIMES (Jan. 29, 2018), http://www.nytimes.com/2018/01/29/business/tax-bill-economic-recovery-opportunity-zones.html. The co-authors of the principal white paper proposing the Opportunity Zones concept were Jared Bernstein, Vice President Joe Biden's former Chief of Staff, and Kevin Hassett, Chairman of President Trump's Council of Economic Advisors when Congress passed the Tax Cuts and Jobs Act of 2017. *See* JARED BERNSTEIN & KEVIN A. HASSETT, ECON. INNOVATION GRP., UNLOCKING PRIVATE CAPITAL TO FACILITATE ECONOMIC GROWTH IN DISTRESSED AREAS 1–2 (2015).

4. *E.g.*, Snidal & Newman, *supra* note 1; *Place-Based Tax Incentives for Community Development*, EVIDENCE MATTERS, Spring/Summer 2019, 3, 6 [hereinafter *HUD Study*].

5. Snidal & Newman, *supra* note 1, at 28–29; *HUD Study*, *supra* note 4, at 4–6.

6. *See generally* TIMOTHY J. BARTIK, MAKING SENSE OF INCENTIVES: TAMING BUSINESS INCENTIVES TO PROMOTE PROSPERITY (2019).

7. *See generally* Alan Peters & Peter Fisher, *The Failures of Economic Development Incentives*, 70 J. AM. PLAN. ASS'N 1, 27–37 (2004).

8. *See, e.g.*, BERNSTEIN & HASSETT, *supra* note 3, at 16–19 (contending that their proposed incentive model that served as the basis for Opportunity Zones improves upon deficiencies in past federal and state incentive programs).

9. *See, e.g.*, *HUD Study*, *supra* note 4.

10. *See, e.g.*, MARTIN D. ABRAVANEL, NANCY M. PINDUS, BRETT THEODOS, KASSIE BERTUMEN, RACHEL RASH & ZACH MCDADE, URB. INST., NEW MARKETS TAX CREDIT (NMTC) PROGRAM EVALUATION: FINAL REPORT 3 (Apr. 2013).

multiple factors, and it becomes clear why assessing the performance of economic incentives can be complicated.[11]

This is not to say that researchers, policy makers, and government agencies have not tried. The most common approach has been to examine changes in statistical indicators of economic well-being in areas where the incentive is available. Some examples include changes in employment figures (*e.g.*, number of jobs, unemployment rate),[12] individual wealth (*e.g.,* household income, poverty level),[13] and the local real estate market (*e.g.*, real estate values, purchase prices).[14]

Examining changes in statistical indicators can lead to useful inferences, especially when an indicator bears a close relationship to a specified objective of the incentive. Because researchers often choose indicator data that is readily available from other sources (*e.g.*, the United States Census Bureau maintains census tract level household income statistics updated every year through the American Community Survey),[15] this can also be a cost-effective approach.

There are, however, shortcomings to relying on indirect statistical indicators. One of the most prominent is difficulty in establishing causation, rather than mere correlation, between the incentive and a change in a particular indicator over time. For example, did commercial real estate prices in a census tract rise due to the availability of an incentive or to proximity to improving values in adjacent census tracts?[16] Identifying indicators that accurately reflect the success of an incentive (*e.g.*, does a change in local household income effectively measure how well an incentive works in drawing new industry to a community?) poses another difficulty. Furthermore, business location and expansion decisions can cause positive and negative externalities in a community which a single statistical indicator (or even a combination of related indicators) is unlikely to measure.[17] An incentive-fueled decision to locate a new factory where

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11. *See, e.g., HUD Study*, *supra* note 4, at 7.

12. *See, e.g.,* Alina Arefeva, Andra C. Ghent, Morris A. Davis & Minseon Park, Job Growth from Opportunity Zones (2021) (unpublished manuscript) (https://uncipc.org/index.php/publication/job-growth-from-opportunity-zones/).

13. Matias Busso, Jesse Gregory & Patrick Kline, *Assessing the Incidence and Efficiency of a Prominent Place Based Policy*, 103 AM. ECON. REV. 897 (2013).

14. *See, e.g.*, Edward F. Pierzak, *Who Gains from Place-Based Tax Incentives? Exploring Apartment Sales Prices in Qualified Opportunity Zones,* 47 J. PORTFOLIO MGMT. 145 (2021).

15. U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY (Oct. 2017), https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf [https://perma.cc/D9VJ-DVHB].

16. *See, e.g.*, Bernardita Calzon, *A Guide to the Methods, Benefits & Problems of the Interpretation of Data*, DATA PINE (Jan. 30, 2024), https://www.datapine.com/blog/data-interpretation-methods-benefits-problems/.

17. Externalities are also often referred to as spillover effects—i.e., the unaccounted benefits or costs created for one party because of another party's actions. A positive externality occurs when the first party's actions make the second party better off, but the first party is not compensated for causing this benefit. A negative externality occurs when the first party's actions make the second party worse

affordable housing might have been constructed could increase the number of jobs in the community but could also reduce housing options and increase pollution for local residents. Measuring net job growth alone may be insufficient to assess whether the incentive "improved" the community.

An alternative is to seek qualitative evidence. This can be done in a variety of ways, including through outreach to those who have actually used an incentive, have direct knowledge of how community businesses have used the incentive or its impact on the community, or are themselves members of the affected community.[18] This approach addresses many of the shortcomings of indirect statistical indicators noted above. Carefully crafted questions can allow researchers to probe for causation linkages between the incentive and decisions by businesses or investors as well as for a range of different externalities following from those decisions. Thoughtful follow-up discussions on interviewee responses can elicit anecdotes, nuance, and highly contextualized observations that can reveal a fuller picture of how a community uses and is impacted by particular incentives. Moreover, thorough canvassing of a place where an incentive has been used can elicit a diverse set of perspectives, particularly useful in places where reportable data and mainstream opinions do not tell the full story.

It is important to note that qualitative approaches have their own shortcomings. Interview questions, interviewers, and interviewees may have biases that inhibit full and accurate responses.[19] Identifying and ensuring the participation of a diverse interview pool that adequately represents the community in question and sufficiently perceives the impact of an incentive depends to a significant extent on the network and credibility of those conducting the study.[20] And it almost goes without saying that the qualitative approach will require significantly more time and cost than examining statistical data, especially if that data is readily available. Among other challenges, this makes it difficult to compare results across different communities, which can be particularly problematic in drawing reliable takeaways where the community studied has many unique characteristics.[21]

That said, qualitative research can be an important complement to examining statistical indicators in developing a full picture of how an economic development incentive has impacted a place. Although less

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off, but the first party does not bear the cost of doing so. *See* JONATHAN GRUBER, PUBLIC FINANCE AND PUBLIC POLICY 125–30 (4th ed. 2012).

18. *See, e.g.*, Snidal & Newman, *supra* note 1, at 27–28; ABRAVANEL ET AL., *supra* note 10, at 31–32.

19. Kelvin M. Mwita, *Strengths and Weaknesses of Qualitative Research in Social Science Studies*, 11 INT'L J. RSCH. IN BUS. & SOC. SCIS. 618, 623 (2022).

20. *Id.* at 622.

21. *Id.*

common, there are some good, recent examples of these types of studies which focused on a single place-based incentive like New Market Tax Credits and Opportunity Zones.[22] Apparently absent from the literature are qualitative studies that use a comparative approach, comparing and contrasting a variety of different business incentive models simultaneously at work in economically distressed places. This is a noteworthy gap. Particularly in distressed neighborhoods and communities that sit close to more prosperous places or otherwise possess unharnessed competitive strengths, there is rarely just one incentive at work.[23] Governments at all levels tend to try a variety of overlapping strategies to engineer a turnaround. Given the turnaround potential and the heightened potential for misinterpretation of statistical indicators in determining which incentives are actually succeeding, places like these justify the additional time and expense associated with qualitative analysis.

The purpose of this article is to share the methodology and results of this type of a qualitative study conducted by the Urban Development Lab ("Lab"), a course that I designed and co-teach at Case Western Reserve University School of Law in Cleveland, Ohio. Over the course of a semester, a group of professors and students examined four different models of economic development incentives in six neighborhoods encircling Cleveland's University Circle neighborhood, home to Case Western Reserve University.[24] From this research, we arrived at significant findings that could be useful to policymakers, legislators, and government agencies when designing and implementing place-based economic development incentives. Admittedly, the scope of our research was limited given that we carried it out within a single semester law school course. It does, however, suggest a model that other legal research or policy studies could bring to scale.

The remainder of this Article is organized as follows: To provide context, Part II briefly describes the neighborhoods encircling University Circle (what this Article will refer to as Greater University Circle or "GUC") and explains the rationale for selecting this research area. Part III identifies and summarizes the four different incentive models that are the subject of this study. Part IV describes the methodology used by the Lab, which involved a two-part process. First, our researchers tracked the use of each of the incentives within the Greater University Circle neighborhoods. Second, they conducted a series of interviews of those within the neighborhoods who used, observed, or were impacted by the incentives. Part IV also discusses the limitations associated with this methodology.

22. *See, e.g.*, Snidal & Newman, *supra* note 1, at 33; ABRAVANEL ET AL., *supra* note 10.
23. *See infra* Part II. The research area that is the subject of this Article is a good example.
24. *See infra* Part II.

Part V summarizes the principal findings and critical takeaways from this study.

II. The Research Area – Greater University Circle

A recent trend in place-based, economic development incentive design is to prioritize distressed areas that have the best combination of need and opportunity.[25] The rationale is that it is smart policy to concentrate limited public resources in the places that stand the best chance of rebounding, rather than to spread them too thinly across all places that are distressed, thereby reducing the likelihood that any of the investments pay off. The long-term hope is that success in a place that is closer to recovery will better position the neighborhood next door to succeed with the next wave of public investments, and so on.[26]

In that sense, Cleveland's Greater University Circle (GUC) neighborhoods seem ideally suited for business incentives and make for an interesting and timely case study. The six neighborhoods—Buckeye-Woodhill, Central, Fairfax, Glenville, Hough and St. Clair-Superior—follow a common narrative arc, similar to the story of neighborhoods in many Rust Belt cities.[27] They began as densely populated and bustling urban neighborhoods, home to ethnic and racial enclaves of varying means, with vibrant commercial districts and blue-collar jobs that attracted and employed many local residents. The early to mid-20th century brought a steady outmigration of more affluent residents and businesses to suburban areas, often replaced by poorer residents and "nuisance retailers" (like

25. *See, e.g.,* Freddy Collier Jr., Cleveland Plan. Comm'n, Neighborhood Transformation Initiative: A Strategy for Equity and Opportunity, https://planning.clevelandohio.gov/MNTI/assets/Neighborhood-Transformation-Initative.pdf [https://perma.cc/JJ4K-AAFF] (PowerPoint presentation demonstrating the City of Cleveland's approach to targeting neighborhood improvement funds in less prosperous areas near areas of growth).

26. *Id.*

27. See *Cleveland Neighborhoods*, ARCGIS ONLINE, https://www.arcgis.com/apps/mapviewer/index.html?layers=b2a2da54401a41e78dd71563f01f5273 [https://perma.cc/9J4G-7XYB] (last visited Apr. 14, 2024) for a map indicating the location of these neighborhoods and showing their proximity to University Circle. For the most part, we excluded two neighborhoods often considered part of Greater University Circle: Little Italy and East Cleveland. *Id.* Although both border University Circle, they are distinguishable from the other GUC neighborhoods in ways that are significant for purposes of this study. *See* J. Mark Souther, *Acropolis of the Middle-West: Decay, Renewal, and Boosterism in Cleveland's University Circle*, 10 J. PLAN. HIST. 30, 38 (2011). First, they are east of University Circle and, thus, not located between University Circle and downtown. *Id.* Second, they have significantly different narrative arcs histories from the other GUC neighborhoods. *Id*. Little Italy maintained its status as an ethnic enclave throughout the twentieth century, relatively isolated from the profound demographic changes experienced by other GUC neighborhoods. *Id.* East Cleveland is a separate city altogether, rather than a Cleveland neighborhood, and has been in a state of fiscal emergency for over a decade operating under the supervision of a state directed financial planning and supervision commission. *Id*. Third, neither Little Italy nor East Cleveland are within the geographic scope of two of the incentive programs examined in this study. *Id*.

liquor and convenience stores) or by nothing at all.[28] Succeeding waves of job and resident loss, housing and building stock deterioration, and unrest and crime made these neighborhoods less desirable places to live or to set up shop, only accelerating more exodus and deterioration. Ultimately, this downward spiral led to a precipitous decline in population and wealth and set the stage for neighborhood housing market collapses during the Great Recession of the early 21st century.[29]

In a city that already stands out nationally for its poor marks for poverty rate,[30] labor force participation,[31] educational attainment,[32] racial segregation,[33] and property vacancy,[34] the GUC neighborhoods typically fare worse, often remarkably worse, than Cleveland as a whole.[35] Each of

28. *See, e.g.*, CLEVELAND FOUND., CLEVELAND'S GREATER UNIVERSITY CIRCLE INITIATIVE: BUILDING A 21ST CENTURY CITY THROUGH THE POWER OF ANCHOR INSTITUTION COLLABORATION 13–15 (2013), https://www.clevelandfoundation.org/wp-content/uploads/2014/01/Cleveland-Foundation-Greater-University-Circle-Initiative-Case-Study-2014.pdf.

29. *Id.* at 14.

30. *See* U.S. CENSUS BUREAU, THE AMERICAN COMMUNITY SURVEY 5 YEAR ESTIMATES (2021) [hereinafter U.S. CENSUS BUREAU ACS]. The poverty rate in Cleveland is 29.3%, significantly higher than the national rate of 12.8%. *Id.*

31. *See id*. The labor force participation rate of all people living in Cleveland is 59.4%, moderately lower than the national rate of 63.1%. *Id*. However, the unemployment rate of people living in the city of Cleveland is 12.38%, nearly four times higher than the national rate of 3.7%. *See also* Press Release, U.S. Dep't of Lab.: Bureau of Lab. Stat., The Employment Situation—May 2023 (June 2, 2023) (https://www.bls.gov/news.release/pdf/empsit.pdf).

32. U.S. CENSUS BUREAU ACS, *supra* note 30. In Cleveland, the proportion of residents aged 25 and above with a high school diploma is 82.6%, while only 19.2% have successfully earned a bachelor's degree. *Id*. These figures are lower than the national averages among United States ("U.S.") citizens, which stand at 88.9% for high school diplomas and 33.7% for bachelor's degrees. *Id*.

33. *See* John R. Logan & Brian J. Stults, *Metropolitan Segregation: No Breakthrough in Sight* 17–19 (Ctr. for Econ. Stud., Working Paper No. CES-22-14, 2022). Cleveland consistently maintains its position among the top six U.S. cities in black isolation index and top eight in dissimilarity index. *Id*.

34. U.S. CENSUS BUREAU ACS, *supra* note 30. The total vacant housing units in Cleveland is 34,383, resulting in a housing vacancy rate of 16.97%. *Id*. The United States has a housing vacancy rate of 10.3%. *Id*.

35. *See generally* Collier, *supra* note 25, at 11–15 (showing Median Household Income, Poverty Rate, Employment, Educational Attainment in GUC neighborhoods compared to selected other Cleveland neighborhoods and Cleveland as a whole); RICHEY PIIPARINEN, KYLE FEE, CHARLIE POST, JIM RUSSELL, MARK J. SALLING & THOMAS BIER, CLEVELAND STATE UNIV., PREPARING FOR GROWTH: AN EMERGING NEIGHBORHOOD MARKET ANALYSIS COMMISSIONED BY MAYOR FRANK G. JACKSON FOR THE CITY OF CLEVELAND 1, 7 (2017) (showing Neighborhood Cluster Maps that demonstrate pronounced racial/socioeconomic clusters in the GUC).

the Buckeye-Woodhill,[36] Central,[37] Fairfax,[38] Glenville,[39] Hough,[40] and St. Clair Superior[41] neighborhoods score lower than Cleveland and significantly lower than the national averages in each of these metrics, which are indicative of overall economic well-being.

Yet, due to their location between Cleveland's two major job centers (downtown and University Circle), experts have long viewed the GUC neighborhoods as poised for a rebound if revitalization could cross a certain threshold.[42] For example, three of Cleveland's largest and most internationally prominent nonprofit institutions—the Cleveland Clinic, University Hospitals, and Case Western Reserve University—are based in University Circle and combine to spend over $3.6 billion annually on goods and services.[43] Notably, they spend only 12 percent of this amount in the City of Cleveland (and only 26 percent in Cuyahoga County, which includes Cleveland),[44] due to the lack of local businesses that operate at a scale large enough to meet their institutional needs.[45]

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36. Buckeye-Woodhill has a poverty rate of 47.6%, labor force participation rate of 49.8%, median household income of $18,185. *See* Alex Dorman, *The New Cleveland Neighborhood Fact Sheets Are Here; Initial Thoughts and Takeaways*, CTR. FOR CMTY. SOLS. (SEPT. 13, 2021), https://www.communitysolutions.com/new-cleveland-neighborhood-fact-sheets-initial-thoughts-takeaways/; *Community Fact Sheets: Cleveland Neighborhoods and Wards*, THE CTR. FOR CMTY. SOLS. [HEREINAFTER *FACT SHEETS*], HTTPS://WWW.COMMUNITYSOLUTIONS.COM/RESOURCES/COMMUNITY-FACT-SHEETS/CLEVELAND-NEIGHBORHOODS-AND-WARDS/ (LAST VISITED APR. 14, 2024); NORTHEAST *OHIO COMMUNITY AND NEIGHBORHOOD DATA FOR ORGANIZING: SOCIAL AND ECONOMIC DATA*, CASE W. RSRV. UNIV. [HEREINAFTER *NEO CANDO*], HTTPS://NEOCANDO.CASE.EDU/NEOCANDO/INDEX.JSP (LAST VISITED MAR. 23, 2024). Vacant housing units' percent of 21.54%. *See, e.g.*, COLLIER, *SUPRA* NOTE 25, AT 14. Minority population of 92%. *NEO CANDO*, *SUPRA* NOTE 36.

37. *See FACT SHEETS, SUPRA* NOTE 36. Central has a poverty rate of 68.8%, labor force participation rate of 54.3%, median household income of $10,440. *SEE NEO CANDO*, *SUPRA* NOTE 36. Vacant housing units' percent of 7.96%. *SEE* COLLIER, *SUPRA* NOTE 25, AT 14. Minority population of 88%. *NEO CANDO*, *SUPRA* NOTE 36.

38. *See FACT SHEETS*, *SUPRA* NOTE 36. Fairfax has a poverty rate of 36.9%, labor force participation rate of 52.0%, median household income of $20,331. *SEE NEO CANDO*, *SUPRA* NOTE 36. Vacant housing units' percent of 23.49%. COLLIER, *SUPRA* NOTE 25, AT 14. Minority population of 92%. *NEO CANDO*, *SUPRA* NOTE 36.

39. *See FACT SHEETS, SUPRA* NOTE 36. Glenville has a poverty rate of 35.7%, labor force participation rate of 55.4%, median household income of $26,434. *SEE NEO CANDO*, *SUPRA* NOTE 36. Vacant housing units' percent of 26.72%. COLLIER, *SUPRA* NOTE 25, AT 14. Minority population of 93%. *NEO CANDO*, *SUPRA* NOTE 36.

40. *See generally* U.S. CENSUS BUREAU ACS, *supra* note 30; *FACT SHEETS, SUPRA* NOTE 36. Hough has a poverty rate of 41.6%, labor force participation rate of 49.7%, median household income of $19,003. *SEE NEO CANDO*, *SUPRA* NOTE 36. Vacant housing units' percent of 21.49%. COLLIER, *SUPRA* NOTE 25, AT 14. Minority population of 92%. *NEO CANDO*, *SUPRA* NOTE 36.

41. *See generally* U.S. CENSUS BUREAU ACS, *supra* note 30; *FACT SHEETS, SUPRA* NOTE 36. St. Clair Superior has a poverty rate of 47.4%, labor force participation rate of 56.8%, median household income of $22,961. *NEO CANDO*, *SUPRA* NOTE 36. Vacant housing units' percent of 37.83% and a minority population of 75.6%. *See id.*

42. *See generally* Souther, *supra* note 27.

43. MOLLY SCHNOKE, MERISSA PIAZZA, HEATHER SMITH & LIAM ROBINSON, CLEVELAND STATE UNIV., GREATER UNIVERSITY CIRCLE INITIATIVE: YEAR 7 EVALUATION REPORT 13 (2018), https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2552&context=urban_facpub.

44. *Id.*

45. CLEVELAND FOUND., *supra* note 28, at 57.

Over the past two decades, a coalition of these institutions has embarked on a coordinated effort to increase procurement in the GUC neighborhoods, recognizing the transformative effect similar efforts in "eds and meds" districts in other cities have had on the economic vitality of surrounding neighborhoods.[46] In a similar vein, a 2017 City of Cleveland-commissioned report by Cleveland State University prioritized the GUC neighborhoods as what should be the prime targets for funds aimed at revitalizing Cleveland's economy.[47] The report referred to these neighborhoods as comprising a "classic 'pinch area' between University Circle and Downtown" in which proximity to job-creating anchor institutions and emerging housing markets indicates they are particularly well-positioned for reinvestment.[48] In other words, the GUC neighborhoods seem to possess Cleveland's best mix of need and opportunity.

Nevertheless, an alphabet soup of different economic development incentives over the last half-century has fallen short of catalyzing a meaningful turnaround in Greater University Circle. The Urban Renewal program,[49] Empowerment Zones,[50] Enterprise Communities, and New Market Tax Credits[51] are just a few of the federal programs meant to induce business capital investments in select distressed communities that have included the GUC neighborhoods as qualifying areas, to say nothing of a multitude of similarly intentioned state and local programs.[52] Why is this? Has the problem been in the design or scope of these specific programs, the futility of the public sector trying to drive private sector development in distressed places, circumstances unique to the GUC, or some combination of the above? Or, put in a more optimistic, forward looking light, what are the design features of place-based economic development programs that the evidence suggests could work best in catalyzing economic opportunities in distressed places with both significant need and significant potential and should factor into future incentive design?

46. *See supra* text accompanying note 27.
47. PIIPARINEN ET AL., *supra* note 35, at 3, 17.
48. *Id.*
49. *See* Souther, *supra* note 27, at 39–42 (describing Cleveland's University-Euclid Urban Renewal Project).
50. *See* CLEVELAND FOUND., *supra* note 28, at 16–17 (describing the federal Empowerment Zone established to improve neighborhoods around University Circle).
51. *See New Markets Tax Credit Resource Center: NMTC Mapping Tool*, NOVOGRADAC [hereinafter *NMTC Mapping Tool*], https://www.novoco.com/resource-centers/new-markets-tax-credits/data-tools/nmtc-mapping-tool (last visited Mar. 23, 2024) (showing the GUC neighborhoods as areas eligible for new markets tax credit investments).
52. *See, e.g.*, *Enterprise Zone Tax Abatement Program*, CITY OF CLEVELAND ECON. DEV., https://makeitincleveland.org/incentives/enterprise-zone-tax-abatement-program [https://perma.cc/H48B-V489] (last visited Apr. 14, 2024).

This research project attempted to scratch the surface on answers to these questions and provide a template for further research that could inform future decisions on how to craft these programs. The timing is good, especially for the GUC neighborhoods, given the amount of physical change taking place in and around them. In 2008, Cleveland's Regional Transit Authority completed a bus rapid transit line on Euclid Avenue, one of the key transportation corridors connecting University Circle and Downtown.[53] This project kicked off a staggering $9.5 billion in residential, commercial, nonprofit and governmental development projects in the ensuing decade along this critical spine that runs through several of the GUC neighborhoods.[54] In 2021, the state of Ohio completed construction on the $257 million Opportunity Corridor, a new 35 mile-per-hour boulevard directly connecting traffic coming in by highway from the south of Cleveland to University Circle and also running through several GUC neighborhoods.[55] A stated purpose of constructing a boulevard rather than extending the highway was to spark economic development in these neighborhoods.[56] At the same time, several University Circle institutions have made significant changes to their landscapes with the goal of removing physical barriers that previously excluded residents of GUC neighborhoods from venturing onto their campuses.[57] In turn, medical residents, university students, and others in search of housing closer to urban amenities are moving into the periphery of GUC neighborhoods and real estate developers are responding in-kind.[58] If there is an ideal moment to figure out how best to implement incentives that spur economic opportunities within these neighborhoods, it is now.

53. *See* Grant Segall, *RTA Says HealthLine had 10-year Payback of $9.5 Billion, 'Woke up' Euclid Corridor*, CLEVELAND.COM (Nov. 4, 2018, 10:08 AM), https://www.cleveland.com/news/erry-2018/11/149927818e3851/rta-says-healthline-had-10year.html.

54. *Id.*

55. Kaylee Remington, *Opportunity Corridor Boulevard Officially Opens in Cleveland (Photos),* CLEVELAND.COM (Nov. 13, 2021, 2:16 PM), https://www.cleveland.com/metro/2021/11/opportunity-corridor-boulevard-officially-opens-in-cleveland.html.

56. *Id.*

57. Steven Litt, *Can University Circle's Beautiful New Nord Greenway Heal a Racial Divide? (Photos)*, CLEVELAND.COM (June 3, 2018, 10:00 AM), https://www.cleveland.com/architecture/index.ssf/2018/06/nord_greenway_is_beautiful_but.html.

58. Steven Litt, *With up to $700 Million Flowing into Hough, a Redlined Cleveland Neighborhood Is Poised for Uplift—Black History Month*, CLEVELAND.COM (Feb. 21, 2022, 11:13 AM), https://www.cleveland.com/news/2022/02/with-up-to-700-million-flowing-into-hough-a-redlined-cleveland-neighborhood-is-poised-for-uplift-black-history-month.html.

III. THE GUC INCENTIVES

A. Place-Based Economic Development Incentive Types

Place-based economic development incentives come in lots of shapes and sizes. Before identifying and explaining the incentives that served as the focal points for this research project, some background on incentive types should be helpful.

A fundamental distinction among incentives, and the one most important for the purposes of this article, is between those that are highly nuanced and selectively available versus those that are designed simply and broadly available. In previous articles, I have employed the terms *smart* and *blunt* to represent this distinction.[59] Smart incentives assume that place-based barriers to development are typically complex, entrenched, and vary significantly, not only among larger regional or municipal markets but also among a particular market's sub-markets (in the case at hand, between different sections or even different neighborhoods of a city).[60] Thus, they are best attacked with nuanced solutions that are intricately designed.[61]

I have previously characterized smart incentives as tailored,[62] limited,[63] variable,[64] complementary,[65] and externality sensitive.[66] Blunt incentives, as the name suggests, favor simplicity and volume over nuance and are comparatively imprecise, widely available, uniform, designed without particular attention to other available incentives, and externality insensitive.[67] Incentives rarely fit exclusively into one category or the other, tending instead towards the smart or blunt end of a spectrum of incentive types.

59. *See* Matthew J. Rossman, *In Search of Smarter Homeowner Subsidies*, 40 U. HAW. L. REV. 203, 205 (2017) [hereinafter *Smarter Homeowner Subsidies*]; Matthew J. Rossman, *Opportunity Knocking? Are Opportunity Zones a Model for a Smarter Federal Homeowner Subsidy?,* 81 U. PITT. L. REV. 103, 104–05 (2019) [hereinafter *Opportunity Knocking*]. In these previous articles, I used the term "subsidy" to indicate government tax breaks meant to encourage a particular action by an individual or business. I use the term "incentive" in this Article in essentially the same way, while recognizing that an incentive might also include financial inducements that are not tax breaks.

60. *Smarter Homeowner Subsidies*, *supra* note 59, at 240–41.

61. *See id.*

62. A tailored incentive is one "crafted to encourage behavior that squarely addresses the identified problem." *Id.* at 253.

63. A limited incentive means one that is restricted to those decisions that will achieve the subsidy's objective. In other words, not overbroad. *Id.*

64. A variable incentive means one that might be altered among and within markets and submarkets to address differences in development challenges within those markets and submarkets. *Id.* This includes a process to modify the incentive over time to ensure it is appropriately calibrated to meet the incentive's objectives. *Opportunity Knocking*, *supra* note 59, at 151.

65. A complementary incentive supports, and does not counteract, other federal, state, and local efforts to address the development challenges at issue press. *Smarter Homeowner Subsidies*, *supra* note 59, at 253.

66. An incentive is externality-sensitive when it increases spillover societal benefits that result from a particular action, while offsetting or reducing resulting spillover societal costs. *Id.* at 238–39.

67. *Id*. at 207, 243.

To illustrate the difference, consider a city that has struggled with housing disinvestment, meaning homeowners and housing developers have extricated themselves from the city, perceiving it as deteriorating and too risky in which to invest capital, leading to further decline.[68] As a strategy for improving the climate for home investment, this city wishes to increase its number of homeowners (meaning those who live in the homes they own) and encourage more investments in homes by homeowners.[69]

An example of a blunt tax subsidy to achieve these objectives would be an annual $1,000 property tax abatement for every owner-occupied residence within municipal boundaries. This strategy assumes a fixed, recurring cash payment will induce prospective home buyers to purchase in the city and convince current owner-occupants to stay by providing both groups with extra funds they may invest in their homes. This type of subsidy is relatively straightforward and easy to administer. Qualification could be demonstrated by a homeowner presenting evidence of title to the home and certifying that this is their primary residence. On the other hand, the subsidy is undeniably overbroad in that it benefits those who do not face a home investment decision (*e.g.,* current homeowners who have no intention of moving or renovating their home). Furthermore, for those making a home investment decision, the abatement shows no preference as to the type and location of the home, other than that it be owner-occupied. Accordingly, the abatement may not support and may even contradict other housing objectives the city may have, such as creating more affordable housing for low-income households in more prosperous neighborhoods. The abatement is blind to differences in supply and demand dynamics among a city's various sub-markets. One neighborhood within the city may already have a thriving housing market that needs no accelerant for new purchases or home investments, while another may require a more generous abatement to spur that type of activity.

An example of a smart subsidy is one that would limit the property tax abatement to those who face an investment decision that will increase the city's stock of quality owner-occupied houses. This could be done, for example, by limiting the abatement to newly constructed homes or those which have undergone substantial renovations. The subsidy could vary in amount and length based on the level of housing disinvestment in particular neighborhoods.[70] It could also target multiple policy goals at once by

68. This is adapted from the definition of "community disinvestment" contained in Arthur J. Naparstek & Dennis Dooley, *Countering Urban Disinvestment Through Community-Building Initiatives*, 42 SOC. WORK 506, 506–07 (1997).

69. This is a strategy employed in many cities that have experienced chronic housing disinvestment. *See, e.g.*, Mark S. Rosentraub, Brian Mikelbank & Charlie Post, *Residential Property Tax Abatements and Rebuilding in Cleveland, Ohio*, 42 STATE & LOC. GOV'T REV. 104, 104 (2010).

70. *See, e.g.*, *Post 94 CRA Changes*, THE CITY OF COLUMBUS, https://www.columbus.gov/Templates/Detail.aspx?id=2147506201 [https://perma.cc/ZPW8-Q7UF] (last visited Mar. 23, 2024)

including additional amounts for homes built for low-income households and for construction that incorporates features that reduce a home's carbon footprint.[71] Undoubtedly, this type of subsidy would reach fewer prospective and current homeowners and require more administrative cost and oversight. Politically, these types of subsidies can be more challenging to pass as fewer constituents will qualify for the subsidy. On the other hand, the funds stand a better chance of encouraging precisely the type of behavior policy makers seek to induce and likely in ways more compatible with other local investments and policies.

As the incentives examined in this Article will show, the smart/blunt distinction applies equally to economic development incentives as it does to housing market incentives. Other commentators have proposed different rubrics for categorizing place-based economic development incentives. These rubrics do not contradict the smart/blunt distinction but rather identify other important distinctions among the universe of development incentives. One prominent example is Professor Michelle Layser's typology of economic development place-based tax incentives as occurring in two dimensions.[72] In the first dimension, Professor Layser distinguishes *direct* (available to businesses within geographically-defined boundaries) versus *indirect* (available to someone who invests in businesses within geographically-defined boundaries) tax incentives.[73] In the second, she distinguishes *spatially-oriented* (available to any business activity that occurs within geographically-defined boundaries) versus *community-oriented* (available only to business activity intended to benefit residents within those boundaries) tax incentives.[74] Other scholars have undertaken more granular typologies, categorizing incentives down to the specific type of benefit provided to businesses for a specific decision that creates jobs or encourages other business activity within a locality and, in so doing, have identified scores of different place-based incentives.[75] This research project

(identifying the six "distress criteria" the city of Columbus uses to determine the level of homeowner tax abatement provided in each of its neighborhoods).

71. In the case of Cleveland, developers and residents seeking to avail themselves of the City's tax abatement for newly constructed or substantially renovated homes must demonstrate adherence to green building standards. *Residential Tax Abatement: Changes to the Tax Abatement Program*, THE CITY OF CLEVELAND, https://www.clevelandohio.gov/CityofCleveland/Home/Government/CityAgencies/CommunityDevelopment/TaxAbatement [https://perma.cc/238J-GLHV] (last visited Mar. 23, 2024).

72. Michelle D. Layser, *A Typology of Place-Based Investment Tax Incentives*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. 403, 411 (2019).

73. *Id.* at 411–12.

74. *Id.* at 412.

75. *See, e.g.*, TIMOTHY J. BARTIK, W.E. UPJOHN INST. FOR EMP. RSCH., A NEW PANEL DATABASE ON BUSINESS INCENTIVES FOR ECONOMIC DEVELOPMENT OFFERED BY STATE AND LOCAL GOVERNMENTS IN THE UNITED STATES 2–4 (Feb. 2017), https://research.upjohn.org/reports/225; Esteban G. Dalehite, John Mikesell & C. Kurt Zorn, *Variation in Property Tax Abatement Programs Among States*, 19 ECON. DEV. Q. 157, 164–65 (2005) (documenting thirteen different varieties of state-level property tax abatements offered as inducements to business location decisions).

centered principally around the efficacy of smarter versus blunter incentives, and so that is the most important distinction for purposes of this article.

B. Incentives Studied

In this study, we examined examples of four different incentive types intended to encourage business activity in Greater University Circle neighborhoods. Below is a short summary of the origin of each specific incentive we examined, how it works, its use in the GUC, and where it fits along the smart/blunt spectrum.

1. Opportunity Zones

The Opportunity Zones program is the most recent federal tax incentive aimed at place-based economic development and became what many considered to be the Trump Administration's signature anti-poverty program.[76] Although tacked at the last minute onto the comprehensive federal tax reform bill called The Tax Cuts and Jobs Act of 2017 ("TCJA"),[77] the core of the Opportunity Zones program was actually a by-product of a considered blueprint produced by a bi-partisan think tank called the Economic Innovation Group ("EIG"). EIG was founded by Silicon Valley entrepreneurs who thought that inviting successful entrepreneurs, policy experts, academics, and investors around a table could yield new insight and innovative solutions to seemingly intractable economic problems.[78] Overcoming investor resistance to putting capital into businesses located in economically distressed areas was one of EIG's first undertakings.[79]

The program allowed each state, during the first half of 2018, to designate up to 25 percent of its high poverty census tracts as Qualified Opportunity Zones and has since provided lucrative federal tax breaks to those who invest in businesses that operate within them.[80] The hope was that offering these tax breaks (a combination of capital gain income tax deferral, reduction, and elimination, depending on the length of the investment) would lure investors, allegedly sitting on trillions of dollars of

76. *See, e.g.,* Erick Trickey, *The Surprisingly Limited Success of Trump's Signature Anti-Poverty Program*, POLITICO (Sept. 29, 2020, 4:30 AM), https://www.politico.com/news/magazine/2020/09/29/cleveland-opportunity-zones-422728.

77. I.R.C. § 1400Z–1; § 1400Z–2.

78. Andrea Chang, *Entrepreneurs Launch Economic Innovation Group, a D.C. Think Tank*, L.A. TIMES (Mar. 31, 2015, 9:08 AM), http://www.latimes.com/business/technology/la-fi-tn-economic-innovation-group-20150331-story.html#.

79. *Id.*

80. § 1400Z–1(d).

capital gains, into Opportunity Zones.[81] This, in turn, would signal to other investors a positive environment in which to invest.[82] The resulting infusion of capital would create jobs and raise incomes, dramatically transforming economic prospects and living conditions in these places.[83]

Summarizing all the intricacies of the Opportunity Zones programs is beyond the scope of this article. The critical feature for the task at hand is that investors seeking the tax breaks pool their realized capital gains into Qualified Opportunity Funds ("QOFs").[84] A QOF is an investment vehicle organized primarily for the purpose of investing in Qualified Opportunity Zone ("QOZ") Property. In other words, QOFs provide tax break-incentivized capital investments to businesses located in Opportunity Zones ("OZ").[85]

Most businesses that operate primarily in a QOZ are eligible for QOF investments.[86] A handful of specified business activities disqualify an entity as a QOZ Business, including: golf courses, country clubs, hot tub and suntan facilities, race tracks and other gambling venues, and liquor stores.[87] But these are narrow restrictions; the intent of the program is to capitalize businesses engaged in a very broad range of goods and services within Opportunity Zones on a large-scale and with minimal restrictions. Investors do not need to seek approval by a reviewing agency to make a qualifying investment nor is there any prescribed limit on the number or amount of qualifying investments.

It is also worth noting that, although Opportunity Zones are primarily low-income census tracts ("LIC"), based on the tract's high poverty rate or low median family income,[88] not all Opportunity Zones meet this standard. Up to 5 percent of each state's designated Opportunity Zones could be census tracts contiguous to an LIC that the state nominated as a QOZ, provided the median family income of these tracts did not exceed 125

81. *Opportunity Zones: Tapping into a $6 Trillion Market*, ECON. INNOVATION GRP. (Mar. 21, 2018), https://eig.org/news/opportunity-zones-tapping-6-trillion-market.

82. *See* BERNSTEIN & HASSETT, *supra* note 3.

83. *Id.* at 5.

84. § 1400Z–2(d)(1).

85. *Id.*

86. Substantially all of a QOZ's tangible assets are used in a trade or business and at least 50 percent of its total gross income is derived from the active conduct of the business. § 1400Z–2(d)(3)(A)(ii) (citing § 1397C(b)(2)).

87. § 1400Z–2(d)(3)(A)(iii) (referring to § 144(c)(6)(B)).

88. *See id.*; *see also* § 45D(e) (Low-income community "means any population census tract if—(A) the poverty rate for such tract is at least 20 percent, or (B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income"); *see also* Rev. Proc. 2018-16, 2018-9 I.R.B. 383 (providing guidance on the procedure for designating low-income community census tracts for purposes of the Opportunity Zones program).

percent of the median family income of the contiguous LIC QOZ.[89] The idea was to allow states to include some census tracts that fell below high poverty thresholds but still made strategic sense to target in part because of the potential spillover effect on adjoining LICs.

Opportunity Zones are an example of a relatively blunt tax incentive. The absence of a vetting or selection process and community benefits standards for qualifying investments means it is not particularly limited or tailored. These design aspects favor investments within Opportunity Zones at large rather than investments with a clear nexus to creating economic opportunities for those who live within the Zones. Using Professor Layser's terminology, Opportunity Zones are spatially oriented, rather than community oriented.[90]

Whether or not intended, however, the design of the OZ tax breaks actually leans towards a particular type of investment. To maximize the program's tax benefits, capital needs to stay invested over a ten-year period. This form of capital lock-up is ideally suited for real estate projects, which ironically tend not to be direct, long-term job creators. Five years into the program, studies confirmed that real estate projects have attracted the largest percentage of Opportunity Zone investments.[91] Anecdotally, there are many reports of OZ-fueled investments financing high-end housing.[92] Furthermore, because the program has no limits on the number or size of investments that qualify for the Opportunity Zone tax benefits, either within designated census tracts or the program overall, a disproportionate number of Opportunity Zone investments has flocked to the most prosperous QOZs, where investors perceive the highest return on investment.[93]

Opportunity Zones do, however, possess some characteristics of smarter incentives. The program is complementary in that funds stack easily on top of other incentives and potentially serve as a final sweetener to close an investment. Furthermore, states were asked to choose

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89. § 1400Z–1(e)(2); *see also* Rev. Proc. 2018-16, 2018-9 I.R.B. 383.

90. *See* Layser, *supra* note 72, at 443.

91. *See, e.g.,* Patrick Kennedy & Harrison Wheeler, Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence 4 (Apr. 15, 2021) (unpublished manuscript) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4024514); BRETT THEODOS, ERIC HANGEN, JORGE GONZÁLEZ & BRADY MEIXELL, URB. INST., AN EARLY ASSESSMENT OF OPPORTUNITY ZONES FOR EQUITABLE DEVELOPMENT PROJECTS: NINE OBSERVATIONS ON THE USE OF THE INCENTIVE TO DATE, at vi (July 28, 2020), https://www.urban.org/sites/default/files/publication/102348/early-assessment-of-opportunity-zones-for-equitable-development-projects.pdf [https://perma.cc/BE5G-45BX]; David Coyne & Craig Johnson, *Use of the Opportunity Zone Tax Incentive: What the Data Tell Us* 9–10 (U.S. Dep't of Treasury, Off. of Tax Analysis, Working Paper 123, 2023), https://home.treasury.gov/system/files/131/WP-123.pdf.

92. *See, e.g.*, Dana Gentry, *Opportunity Zones, Meant to Combat Blight, Spur Luxury Living*, NEV. CURRENT (Mar. 10, 2022, 5:00 AM), https://www.nevadacurrent.com/2022/03/10/opportunity-zones-meant-to-combat-blight-spur-luxury-living/; Jesse Drucker & Eric Lipton, *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, THE N.Y. TIMES (Sept. 27, 2020), https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html.

93. *See* Coyne & Johnson, *supra* note 91.

strategically and create their own guidelines in designating up to 25 percent of qualifying census tracts that reflected the best combination of opportunity and need. In this sense, the program might be considered a "limited" incentive.

The state of Ohio chose to include twenty-nine of the census tracts from Greater University Circle neighborhoods on its list of 320 designated Opportunity Zones. These constitute a majority (63 percent) of the GUC census tracts, as well as every one of the City of Cleveland census tracts that directly borders University Circle.[94] In settling on the balance between development potential and need, however, the state made some eyebrow-raising choices. This included rejecting eleven census tracts in the Buckeye-Shaker, Hough, and St. Clair Superior neighborhoods, originally nominated by local leaders and seemingly strong candidates for OZ investments based on their locations next to commercial corridors or within other targeted development areas.[95] Meanwhile, Ohio designated the two census tracts that comprise relatively prosperous University Circle as Opportunity Zones.[96] Around the country, many census tracts that included elite universities, like the University Circle tracts, qualified as low-income communities based on the income of their non-wage earning students and states typically did not hesitate to designate them as QOZ's, notwithstanding the fact that these census tracts typically did not fit the profile of communities in need of an economic spark.[97]

2. New Markets Tax Credits

Originally enacted by Congress in 2000, and extended multiple times since then, the federal New Markets Tax Credit ("NMTC") program served to some extent as a blueprint for Opportunity Zones.[98] NMTCs are likewise

94. Stan Bullard, *Greater Cleveland Partnership Sets Plan for New Socially Focused Loan Fund*, CRAIN'S CLEVELAND BUS. (June 10, 2019, 5:34 PM), https://www.crainscleveland.com/real-estate/greater-cleveland-partnership-sets-plan-new-socially-focused-loan-fund (showing map of Cuyahoga County Opportunity Zone census tracts).

95. Nick Castele, *Cuyahoga County Won Dozens of Opportunity Zones. Now What?*, IDEASTREAM PUBLIC MEDIA (Dec. 10, 2018, 11:00 AM), https://www.ideastream.org/community/2018-12-10/cuyahoga-county-won-dozens-of-opportunity-zones-now-what (showing that Cuyahoga County Opportunity Zones map (colored in pink) rejected census tracts in these neighborhood).

96. *See, e.g.*, *id.*

97. *See* Ruth Simon & Richard Rubin, *As States Pick 'Opportunity Zones' for Tax Breaks, a Debate over Who Benefits*, WALL ST. J. (Mar. 20, 2018, 8:00 AM), https://www.wsj.com/articles/will-new-tax-incentives-for-poor-communities-work-some-are-skeptical-1521547201.

98. "The New Markets Tax Credit [("NMTC")] was enacted by the Community Renewal Tax Relief Act of 2000 (P.L. 106-554) to provide an incentive to stimulate investment in low-income communities [("LICs")]. The original allocation authority eligible for the NMTC program was $15 billion from 2001 to 2007." DONALD J. MARPLES, CONG. RSCH. SERV., NEW MARKET TAX CREDITS: AN INTRODUCTION 1 (2022), https://crsreports.congress.gov/product/pdf/RL/RL34402/42 [https://perma.cc/Y63Y-GFDZ] (providing a history of subsequent Congressional authorizations, which has extended the program through 2025 with total allocation authority of up to $91 billion).

a federal income tax break intended to attract private investment to low-income and economically distressed communities that lack capital in order to spur community and economic development.[99] "Private investors . . . receive a tax credit paid out over 7 years equal to 39 percent of their equity investments" that provide capital to qualifying businesses and projects in designated communities.[100] Similar to Opportunity Zones, an intermediary investment fund, in the case of NMTCs called a "Community Development Entity" ("CDE"), pools investors' funds and serves as the mechanism for providing capital to recipient businesses and projects.[101] The drafters of the Opportunity Zone legislation even borrowed directly from the statute that established NMTCs in adopting the construct of low-income communities ("LICs") to establish the pool of eligible census tracts states could nominate as Opportunity Zones.[102]

All that said, Opportunity Zones are more a reaction against than an emulation of NMTCs. The Economic Innovation Group study that introduced and proposed the OZ concept asserted that NMTCs, while successful in part, had become increasingly complex and not well designed to induce the kind of large-scale investment necessary to accelerate revitalization across the communities the program intended to serve.[103]

The intermediary investment vehicles provide some of the most striking distinctions between the programs. CDEs are certified and regulated by the Community Development Financial Institutions Fund ("CDFI"), a bureau within the United States Department of Treasury.[104] Becoming a CDE requires an application to the CDFI, which includes a demonstration that the CDE has the primary mission of serving low-income communities and has mechanisms in place to ensure accountability to those communities.[105] Certified CDEs then compete annually for a fixed dollar amount of tax credit allocations through an extensive application process that requires a CDE to demonstrate, among other things, the strength of its investment strategies, "positive community outcomes" associated with its investments, and its capability to manage NMTC investments.[106] A CDE's track record in successfully carrying out financing also impacts its success

99. ABRAVANEL ET AL., *supra* note 10, at 8.
100. Coyne & Johnson, *supra* note 91, at 3.
101. I.R.C. § 1400Z–1(a).
102. § 1400Z–1(c)(1) (citing § 45D(e)).
103. BERNSTEIN & HASSETT, *supra* note 3, at 10.
104. *CDE Certification*, CMTY. DEV. FIN. INSTS. FUND [hereinafter CDFI FUND], https://www.cdfifund.gov/programs-training/certification/cde (last visited Mar. 23, 2024).
105. MARPLES, *supra* note 98, at 2.
106. *See, e.g.*, CMTY. DEV. FIN. INSTS. FUND, NMTC PROGRAM: 2022 ALLOCATION APPLICATION 29 (2022), https://www.cdfifund.gov/sites/cdfi/files/2022-11/CY_2022_NMTC_Program_Application.pdf [https://perma.cc/N8UB-XFC6].

in applying for NMTC tax credits.[107] Ultimately, the CDFI scores and ranks CDE applicants based on those likely to achieve the greatest community development impact.[108] Taken together, these features stand in sharp contrast to the theoretically unlimited amounts of Opportunity Zone tax breaks available through the theoretically unlimited numbers of Qualified Opportunity Funds that merely need to self-certify compliance with procedural program rules and do not publicly report on their investments.

Several distinctive features of the NMTC program make it a "smarter" incentive than Opportunity Zones. First, the investment-filtering role of CDEs, combined with the competition for finite tax credit dollars guided by the CDFI Fund's selection criteria, necessarily limits the use of the incentive. Presumably, those CDEs and projects that most effectively demonstrate the intention and potential to achieve the incentive program's stated objectives are the ones awarded the credits.[109] Furthermore, the NMTC application requires an explanation of projected community outcomes beyond merely stating that the CDE will spur economic activity; the CDE must demonstrate, for example, how it will create affordable housing units, reduce food deserts or generate positive environmental outcomes.[110] On its face, this feature also makes NMTCs more externality-sensitive than Opportunity Zones. On top of this, NMTCs are subject to ongoing Congressional reporting requirements and periodic reauthorization, which has led to refinement of the program over time to better meet its stated objectives.[111]

On the other hand, certain features of NMTCs make the program blunt relative to other incentives. Most notably, NMTCs deliver only one type of assistance—cash as either equity investments or loan agreements—and thus could be viewed as less adaptable to the specialized economic development needs of particular communities. All the census tracts in the GUC meet the statutory definition of "low-income community" and thus are eligible for NMTC investments.[112] This stands in contrast to Opportunity Zones, which required states to limit OZ designation more strategically to the highest priority LICs that they thought presented the best mix of need and opportunity. Furthermore, some commentators, including Professor

107. CMTY. DEV. FIN. INSTS. FUND, INTRODUCTION TO THE NEW MARKETS TAX CREDIT PROGRAM 32 (Sept. 30, 2021) [hereinafter INTRODUCTION TO NMTC], https://www.cdfifund.gov/sites/cdfi/files/2021-11/2021_Introduction_to_the_NMTC_Program.pdf [https://perma.cc/4NTD-KMLB].

108. MARPLES, *supra* note 98, at 4.

109. *See* INTRODUCTION TO NMTC, *supra* note 107, at 34.

110. CMTY. DEV. FIN. INSTS. FUND, NMTC PROGRAM: ALLOCATION APPLICATION FREQUENTLY ASKED QUESTIONS 43 (2021), https://www.cdfifund.gov/sites/cdfi/files/2021-12/2021New_Markets_Tax_Credit_Program_Application_FAQsDecember152021.pdf [https://perma.cc/YS44-QLW4].

111. A. Quinton White, III, *Evolution of the New Market Tax Credit*, 242 J. ECON. & STAT. 609, 616 (2022) (noting "the NMTC program has evolved considerably since its inception and often in response to specific criticisms about the types of investment and location of the investment").

112. *See NMTC Mapping Tool*, *supra* note 51.

Layser, characterize the NMTC statute's definition of eligible investments as broad and spatially-oriented, rather than community-oriented, because it does not require that selected projects necessarily benefit local communities or involve community stakeholders.[113] As noted throughout this section, however, CDFI application questions and selection criteria suggest NMTCs actually tilt more in the direction of being "community-oriented" than the statute requires.

3. Neighborhood Transformation Initiative

The Neighborhood Transformation Initiative ("NTI") is a City of Cleveland program with ambitions similar to the OZ and NMTC programs: invest and leverage public funds upfront to attract the private market to return to economically distressed neighborhoods with the hope of sparking neighborhood revitalization and providing job opportunities to neighborhood residents.[114] NTI is, however, quite different from the federal programs in its scope and design.

To start, Cleveland was significantly more selective and contemplative in picking neighborhoods that qualify for the program incentives than the OZ and NMTC programs.[115] Prior to launching NTI in 2018, the City commissioned a report by Cleveland State University's Center for Population Dynamics to identify the places in the City where a concentrated infusion of public incentives would be best used to spur a private market turnaround.[116] The Center recommended the City prioritize investment in neighborhoods located near the City's 'eds and meds' anchor institutions and/or between around the edges of parts of Cleveland where real estate was beginning to appreciate.[117] The report then identified portions of five neighborhoods that best fit the criteria, all of which are within the GUC.[118] Ultimately, the City settled on portions of four neighborhoods, three of which are in the GUC.[119]

With NTI, the City planned to employ a comprehensive three-pronged approach in each of the selected neighborhoods, launching various

113. *See* Layser, *supra* note 72, at 412.

114. *Re-investment Approach in Targeted Geographics*, NEIGHBORHOOD TRANSFORMATIVE INITIATIVE, https://planning.clevelandohio.gov/MNTI/index7.html [https://perma.cc/3272-UAVT] (last visited Apr. 14, 2024).

115. *See* PIIPARINEN ET AL., *supra* note 35, at 7–11.

116. *See id.*; *see also* CITY OF CLEVELAND: DEP'T OF ECON. DEV., REPORT TO COUNCIL 30 (2018) [hereinafter REPORT TO COUNCIL 2018], https://makeitincleveland.org/assets/downloads/2018-annual-report-revised.pdf [https://perma.cc/L62D-WJYD].

117. *See* PIIPARINEN ET AL., *supra* note 35.

118. *Id.* at 2 ("The neighborhoods in Cleveland that best fit the criteria are Fairfax, and then parts of Glenville, Buckeye-Shaker, Buckeye-Woodhill, and Hough.").

119. NEIGHBORHOOD TRANSFORMATIVE INITIATIVE, *supra* note 114 (identifying as target areas Circle North (which is part of Glenville), Buckeye-Woodhill, Clark-Metro and the E. 79th Street corridor (which runs through Fairfax)).

programs to support (1) commercial and mixed-use development to create neighborhood jobs, (2) new housing construction and existing housing rehabilitation, and (3) entrepreneurship and small business growth to build wealth for residents.[120] For each program, the City would leverage a portion of a $25 million City bond fund to enlist additional financial support from banks and philanthropic partners, amounting to a total of $65 million in NTI funds.[121] The City decided to use the Circle North portion of the Glenville neighborhood as its pilot project and eventually expand to the other neighborhoods.[122]

With respect to economic development specifically, NTI has funded a variety of programs in the target neighborhoods during its five-year lifespan. These include technical assistance and mentorship to small businesses provided through a variety of nonprofit community partners,[123] building acquisition and stabilization for future development along vital commercial corridors,[124] and miscellaneous small business lending programs.[125] The most sustained and visible commercial investment NTI has made to date and the one that we focused on for this research project is the Glenville Circle North mixed-use development, and in particular the GlenVillage retail incubator housed within it.[126]

With the aim of returning business activity and resident-owned businesses to the once vibrant East 105th St. commercial corridor and by leveraging its close proximity to Case Western Reserve University and three hospital systems, the Circle North project resulted in the construction of a 63-unit residential building with a first-floor retail space for seven businesses. The plan was to use the retail space as an incubator for competitively selected businesses, which would, after establishing a solid foothold, eventually move into a permanent location, and create openings for new waves of businesses.[127] While at GlenVillage, the businesses would receive rent and store build-out subsidies, technical, marketing and

120. REPORT TO COUNCIL 2018, *supra* note 116, at 30–31.

121. Press Release, City of Cleveland, Office of the Mayor, Mayor Frank G. Jackson Announces First Phase of the Neighborhood Transformation Initiative (Mar. 28, 2018).

122. Nancy Kelsey, *Mayor Frank G. Jackson's Neighborhood Transformation Initiative Supports First Retail Incubator in Glenville*, AKRON CLEVELAND ASS'N OF REALTORS BLOG (Oct. 24, 2018, 12:00 AM), https://www.akronclevelandrealtors.com/blogs/design-login/2018/10/24/mayor-frank-g-jacksons-neighborhood-transformation.

123. CITY OF CLEVELAND: DEP'T OF ECON. DEV., REPORT TO COUNCIL 35 (2020) [hereinafter REPORT TO COUNCIL 2020], https://makeitincleveland.org/assets/downloads/2020-annual-report.pdf [https://perma.cc/U57P-3G67].

124. CITY OF CLEVELAND: DEP'T OF ECON. DEV., REPORT TO COUNCIL 35 (2021) [hereinafter REPORT TO COUNCIL 2021] (on file with author).

125. REPORT TO COUNCIL 2020, *supra* note 123, at 12.

126. *See* GLENVILLAGE, https://glenvillagecle.com/ (last visited Mar. 23, 2024).

127. *Id.*

operational assistance, and a landlord that would understand and support the mission of cultivating businesses in their infancy.[128]

This hyper-local approach to economic development represents the "smartest" of the incentive models studied in this project. NTI incentives were carefully tailored to meet the perceived capital and business needs of fledgling enterprises. Program managers selected the seven businesses from a competitive pool of 185 applicants carefully, in part with an eye towards who might draw a following (and their dollars) into Glenville from nearby University Circle and other places throughout the city.[129] As opposed to the OZ and NMTC tax breaks, which are statutorily prescribed and pre-established, NTI is a bond fund that supports a variety of different incentives and program benefits that can vary by neighborhood and project and allows those who manage it to mold support to fit the unique needs of the businesses involved. These features make the program incentives highly tailored, limited and variable. Local control of the program and flexibility in how the funds will be spent also gives program managers the ability to complement and partner with other funding sources. In fact, that compatibility is essential to NTI's overall funding which relies on using public funds to leverage the involvement of philanthropic and private sector dollars.[130] Given the program's stated adherence to the city's development "pillars" of health, equity, and sustainability, it is also, at least on its face, externality sensitive.[131]

4. Paycheck Protection Program

In contrast, the final program we considered did not involve a place-based incentive. Nor was it meant to remedy the type of entrenched economic distress that is the focus of the other three incentive programs. Rather, Congress used the Paycheck Protection Program ("PPP") to provide immediate financial aid to a wide swath of American small businesses to keep them afloat and their employees working during the COVID pandemic.[132] We selected it for this research project because it provides an

128. *See* REPORT TO COUNCIL 2020, *supra* note 123, at 33.

129. *See* Chris Ball, *With Retail Incubator Set to Open, Glenville Envisions a New Future*, FRESHWATER (Dec. 12, 2019), https://www.freshwatercleveland.com/features/glenville121219.aspx#:~:text=The%20mixed%2Duse%20development%20includes,bringing%20hope%20to%20impoverished%20Glenville; Jade Jarvis, *Glenvillage Retail Incubator Is an Opportunity for Small Business Owners to Overcome Barriers*, NEWS 5 CLEVELAND (Jan. 31, 2020, 5:15 PM), https://www.news5cleveland.com/news/local-news/a-better-land/glenvillage-retail-incubator-is-an-opportunity-for-small-business-owners-to-overcome-barriers.

130. Press Release, City of Cleveland, *supra* note 121.

131. *See* Collier, *supra* note 25, at 3.

132. *See generally* David Autor, David Cho, Leland D. Crane, Mita Goldar, Byron Lutz, Joshua K. Montes, William B. Peterman, David D. Ratner, Daniel Villar Vallenas & Ahu Yildirmaz, *The $800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?* 3 (Nat'l Bureau of Econ. Rsch, Working Paper No. 29669, 2022), https://www.nber.org/papers/w29669.

entirely different model of a publicly funded subsidy intended to alleviate economic distress. PPP tilts heavily towards the blunt end of the incentive spectrum and with a direct to business delivery model that provides a thought-provoking contrast to the other three programs we studied. Crisis often spurs innovation, and we wondered if the PPP offers lessons or even strategies that might be incorporated into future place-based economic development incentives.

Congress intended the PPP to provide immediate cash infusions by way of forgivable loans to small businesses facing financial distress. Over a year and a half period, the PPP extended a staggering $800 billion in loans to businesses throughout the country, almost all of which were forgiven.[133] Although the United States Small Business Association ultimately provided the capital (through loan guarantees) and determined which loans would be forgiven, Congress charged the nation's banking system with processing and delivering the PPP loans.[134]

The program received three tranches of funding. On March 27, 2020, just weeks after the pandemic caused widespread business shutdowns, Congress passed the Coronavirus Aid, Relief and Economic Security Act of 2020 (CARES),[135] which established the PPP and provided $350 billion in appropriations intended for loans to small businesses, which typically meant companies with fewer than 500 employees.[136] In just a few weeks, the entire $350 billion had been claimed.[137] Later, to qualify for loan forgiveness, a business needed to prove it had: (1) spent at least 60 percent of the loan amount on payroll expenses; (2) spent the full loan amount on total qualifying expenses, which included payroll, utilities, rent, and mortgage payments; (3) maintained average full-time equivalent employment at the business's pre-pandemic level; and (4) maintained employee wages at a level that was at least 75 percent of their pre-pandemic level.[138] The second requirement has led commentators to speculate that the PPP was also intended to provide businesses with the capital to meet non-compensation obligations to creditors, like suppliers, banks and landlords.[139] The business had to meet the criteria for a period between eight and twenty-four weeks, depending on the arrangement made with the business, and the SBA offered a range of alternative routes to forgiveness and safe harbors to help businesses comply.[140]

133. *Id.* at 1.
134. *Id.* at 3.
135. Coronavirus Economic Stabilization (CARES Act), 15 U.S.C. §§ 9001–9141 (2020).
136. Autor et al., *supra* note 132, at 3–4.
137. Thomas W. Joo & Alex Wheeler, *The "Small Business" Myth of the Paycheck Protection Program*, 54 UC DAVIS L. REV. ONLINE 21, 26 (2020).
138. Autor et al., *supra* note 132, at 4.
139. *Id.*
140. *Id.*

Congress approved a second tranche of PPP funds amounting to $320 billion on April 24, 2020 via the Paycheck Protection Program and Health Care Enhancement Act.[141] It passed a third tranche on December 27, 2020 amounting to $285 billion via the Consolidated Appropriations Act of 2021.[142] This third tranche was limited to businesses that had not previously taken out a PPP loan and to "second draw" loans for businesses that had taken out a previous loan but had fewer than 300 employees and had experienced a significant revenue loss in 2020.[143] "About 75 percent of the third tranche of funding went to second-draw loans."[144]

All the GUC neighborhoods qualified for PPP loans, as did every other place in the country. That is not to say that each small business actually obtained a proportionate amount of the available PPP funds.[145] In fact, numerous postmortems on the PPP have demonstrated that larger qualifying businesses and those with pre-existing banking arrangements had a distinct advantage over smaller, less financially sophisticated businesses in obtaining funds.[146] Our research revealed that GUC area businesses received a total of 7,435 PPP disbursements during the life of the program totaling $313,103,035 and that the disbursements were spread broadly throughout Greater University Circle.[147]

As mentioned above, the PPP drew our attention as perhaps the bluntest example of an economic development strategy aimed at ameliorating economic distress, certainly in recent history. The PPP program operated based on the simple premise that businesses needed cash to stay in business and made those funds readily available to anyone who could meet the program's minimal standards. Thus, it was not particularly tailored nor limited. It is fairly evident from the program's distribution of $800 billion to 5.2 million borrowers and 94 percent loan forgiveness rate that the program prioritized rapid distribution of funds and minimal program administration over targeting and oversight. The program was externality-insensitive in that it paid no mind to spillover effects, positive or negative, other than the obvious benefits associated with keeping the

141. Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020) (amending 15 U.S.C. §§ 636, 9006, 9009).

142. Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), Pub. L. 116-260, § 301, 134 Stat. 1993, 1993 (2020).

143. Autor et al., *supra* note 132, at 4.

144. *Id.*

145. Stacy Cowley & Ella Koeze, *1 Percent of P.P.P. Borrowers Got over One-Quarter of the Loan Money*, THE N.Y. TIMES (Oct. 11, 2021), https://www.nytimes.com/2020/12/02/business/paycheck-protection-program-coronavirus.html.

146. Brook E. Gotberg, *Small Business Disaster Relief and Restructuring*, 131 YALE L.J. F. 388, 395 (2021); *see also* Ilya Beylin, *The Ignominious Life of the Paycheck Protection Program*, 23 N.Y.U. J. LEGIS. & PUB. POL'Y 587 (2021).

147. G. Todd Robie, The Check Wasn't Just in the Mail: Examining the Paycheck Protection Program through the Experiences of Recipients in the Greater University Circle Area of Cleveland 5–7 (Nov. 30, 2022) (unpublished manuscript) (on file with author).

economy functioning. And the type of assistance did not vary based on the type of applicant, nor did it change much over the course of the program's lifespan (other than narrowing eligibility criteria, in particular in the third tranche).[148] On the other hand, the program's relative lack of specific guidelines or restrictions meant that it posed little impediment to businesses that received PPP funds from using other programs and, in that sense, was complementary.

IV. METHODOLOGY

Our research team sought to assess the performance of these four distinct types of economic development incentives in the GUC neighborhoods using direct qualitative evidence, rather than secondary indicators of neighborhood economic well-being. Gathering qualitative evidence involved a two-phase approach.

In Phase One, our team endeavored to identify each use of each incentive in the GUC neighborhoods from each incentive program's inception up until the end of 2021. The purpose of Phase One was to track incentive use, become familiar with each program, and identify interview candidates for Phase Two. To undertake this part of the research, we had to first establish geographic boundaries for the six GUC neighborhoods.[149] We faced the choice of delineating the boundaries based on ZIP Codes, federal census tracts,[150] or neighborhoods as identified by the City of Cleveland's Planning Commission, which are technically referred to as Statistical Planning Areas ("SPAs").[151] None of these options turned out to be a perfect fit. Each program sorted its data using different boundary criteria, and often the criteria encompassed areas outside the six GUC neighborhoods. For example, the publicly available PPP data we obtained was organized by ZIP Code and involved thousands of disbursements, which would have made separating the data into census tracts or even SPAs very time consuming.[152] The ZIP Codes that encompassed the GUC neighborhoods, however, also encompassed other Cleveland neighborhoods and sometimes even stretched into parts of neighboring

148. Autor et al., *supra* note 132, at 4.

149. *See supra* note 27 and accompanying text (describing methodology for selecting the six neighborhoods).

150. A statistical subdivision of a county that is smaller than a zip code and optimally includes around four thousand people. U.S. CENSUS BUREAU, 2010 CENSUS REDISTRICTING DATA (PUBLIC LAW 94-171) SUMMARY FILE app. at A-12 (2010), https://www2.census.gov/geo/pdfs/reference/GTC_10.pdf [https://perma.cc/5YHW-RX58] (last visited Mar. 23, 2024).

151. A map of the City of Cleveland's neighborhoods/statistical planning areas is available on the Planning Commission's website. *GIS Maps*, CLEVELAND CITY PLAN. COMM'N, https://planning.clevelandohio.gov/maps/index.php [https://perma.cc/DBF3-HUF9] (last visited Mar. 23, 2024).

152. *See, e.g.*, *Paycheck Protection Program (PPP)*, PANDEMIC OVERSIGHT, https://www.pandemicoversight.gov/data-interactive-tools/interactive-dashboards/paycheck-protection-program [https://perma.cc/L7VN-F4DS] (last visited Mar. 23, 2024).

cities, making them less than ideal for assessing the use of programs that had fewer disbursements than the PPP.

We ultimately settled on an approach that involved identifying disbursements under each of the programs that occurred within the five ZIP Codes that encompass the GUC neighborhoods.[153] For Opportunity Zones, New Markets Tax Credits, and the Neighborhood Transformation Initiative, we then excluded those disbursements that occurred outside of the GUC neighborhood boundaries (which we determined based on the City Planning Commission's SPAs). Given the time-intensive effort that would have been required to separate the PPP disbursements that occurred outside of the GUC neighborhoods, we accepted that the PPP data in this first phase of the study would be somewhat over-inclusive. We attempted to remedy this issue in Phase Two of the study by only seeking to interview PPP recipients located in the GUC neighborhoods.

It is also worth noting that we ultimately chose not to exclude use of the program incentives that occurred in the University Circle neighborhood itself, which fell within two of the GUC ZIP Codes.[154] We thought it was interesting and relevant to compare how and the extent to which the incentive programs we studied—meant to spark economic development in distressed areas—were employed in University Circle (by almost any account, an economically thriving area) with use in the neighborhoods outside of University Circle.

With these geographic parameters in place, our team combed through publicly available data sources to identify the businesses and projects within the GUC that received disbursements from each of the four selected programs. Not surprisingly, given the significant differences in scope, history, and approach of each of the incentive programs, the results varied significantly from program to program. The table below shows a breakdown for each incentive program using the following criteria: the time period studied, the estimated number of GUC businesses that used the incentive during that time period, and the aggregate amount of incentive program dollars invested in the GUC over that time period.[155]

153. *Id.* These Zip Codes are 44103, 44104, 44106, 44108, and 44120. *See also* ZIPMAP, https://zipmap.net/Ohio/Cuyahoga_County/Cleveland.htm (last visited Mar. 23, 2024).

154. *See* ZIPMAP, *supra* note 153. These Zip Codes are 44106 and 44120. *Id.*

155. This is a challenging figure to compute for each program, except the Paycheck Protection Program. There is significant variation among the programs as to the manner in which costs are determined and funds are expended, such that an apples-to-apples comparison as to program cost or investment yield is nearly impossible.

Business Incentive Programs	***Time Period***	***Estimated # of GUC Businesses/ Projects Funded***	***Total $$ Invested in GUC Businesses/ Projects By Incentive Program***
Opportunity Zones (for investments for which investors claimed Ohio OZ tax credit)	2018 - 2021	10	$117.1 Million[156]
New Markets Tax Credits	2003 - 2021	42	$326.9 Million[157]
Neighborhood Transformation Initiative (Retail Incubator Component)	2017 - 2021	7	$1.4 to $6 Million[158]
Paycheck Protection Program	2020 - 2021	6,239	$313.1 Million[159]

156. *See* OHIO DEP'T OF DEV., FISCAL YEAR 2022 ANNUAL REPORT app. 1 (2022), https://development.ohio.gov/static/annualreports/2022-Department-of-Development-Annual-Report.pdf. This figure equals the sum of investments by Ohio Qualified Opportunity Funds in GUC businesses for those Funds which had investors who sought the Ohio Opportunity Zone tax credit. OHIO DEP'T OF DEV., FISCAL YEAR 2021 ANNUAL REPORT app. 1 (2021) [hereinafter 2021 FISCAL REPORT], https://development.ohio.gov/static/annualreports/2021-Ohio-Department-of-Development-Annual-Report.pdf; OHIO DEP'T OF DEV., FISCAL YEAR 2022 ANNUAL REPORT app. 1 (2020) [hereinafter FISCAL YEAR 2022 REPORT], https://development.ohio.gov/static/annualreports/2020%20Development%20Services%20Agency%20Annual%20Report.pdf.

157. This figure equals the aggregate dollar amount of Qualified Low Income Community Investments ("QLICIs") made in GUC businesses or projects by Community Development Entities (CDEs) as a result of the NMTCs awarded to those projects. *See infra* note 185 (describing how our lead NMTC researcher gathered this information).

158. This figure range is based on a spreadsheet showing city expenditures on the Neighborhood Transformation Initiative over its lifespan. The spreadsheet shows the city having spent $1.4 million in direct costs for the GlenVillage retail incubator, including buildout of the space, master lease payments and operational support. The spreadsheet also shows expenses related to the construction of the Glenville Circle North mixed-use project, which houses the GlenVillage incubator, and to nonprofit business organizations for entrepreneurial technical assistance and micro-lending. These additional expenses make up the balance of the $6 million figure, a percentage of which is presumably allocable to GlenVillage. We assume that the total expenses associated with GlenVillage fall somewhere within this range. City of Cleveland, *NTI Investment—City Bonds and Other $* (Mar. 15, 2022) (on file with author.)

159. Our research team used the federal government's Pandemic Response Accountability Committee's Paycheck Protection Program Interactive Dashboard to track and compute the total number and dollar amount of PPP disbursements received in the GUC Zip Codes, after refining the list based on observed typographical and other errors. *See* PANDEMIC OVERSIGHT, *supra* note 152. As noted earlier,

A significant caveat applies to the data listed for Opportunity Zones due to a change Congress made to the original design of the program as it sped its way to approval as part of the 2017 omnibus tax reform bill. Congress removed the requirement that the Secretary of the Treasury Department report regularly to Congress on Opportunity Zone investments, including the types and location of investments and their impact on economic indicators including job creation, poverty reduction, and new business starts.[160] As a result, it is not currently possible to determine, in most instances, where Opportunity Zone investments are made and in what amounts. Fortunately, for our purposes, the Ohio legislature adopted a state Opportunity Zone investment tax credit, which allowed us to track Opportunity Zone investments in the GUC to a certain extent.[161] Investors who put money into a federal Qualified Opportunity Fund located in Ohio that invests in Ohio OZ Businesses may take advantage of an accompanying state tax credit, but must apply for it with the Ohio Department of Development ("ODOD").[162] ODOD releases an annual report that includes details about each application for an Ohio Opportunity Zone Tax Credit, including the name and location of the business receiving the investment and the dollar amount of the QOF's investment in the business.[163] It is unknown exactly what percentage of investors in Ohio Opportunity Zones seek the credit. Nevertheless, to date it is the best data source for tracking Opportunity Zone investments in the GUC.

In Phase Two of the research, our team identified and interviewed individuals familiar with the use of each incentive program in the GUC. Each of the four students enrolled in the Urban Development Lab took the lead on one of the incentive programs. They used the publicly available tracking data we had gathered to identify leaders of the businesses that had utilized one of the incentives. In consultation with the Lab's faculty members, the student researchers also identified others who might have insight on local use of the incentives. These included representatives of

this resulted in a total of 7,435 PPP disbursements within the GUC Zip Codes. *See* Robie, *supra* note 147, at 5–7. Using Microsoft Excel tools and an initial examination of the list, our principal researcher identified instances of multiple disbursements to the same business and arrived at 6,335 as the number of unique GUC businesses that received the 7.435 disbursements. Our researcher then manually examined two separate batches of 200 disbursements, identifying a total of six more businesses that had received multiple disbursements. Applying the resulting error rate of 1.5% to the rest of the disbursements, we arrived at the statistical estimate that 6,239 unique GUC businesses received PPP disbursements.

160. Investing in Opportunity Act, S. 293, 115th Cong. § 2(c)(2) (2017).

161. OHIO REV. CODE ANN. §§ 122.84(A)(2), (F) (West 2022).

162. *See Ohio Opportunity Zone Tax Credit Program*, OHIO DEP'T OF DEV., https://development.ohio.gov/business/state-incentives/ohio-opportunity-zones (last visited Mar. 23, 2024).

163. *See, e.g.,* 2021 FISCAL REPORT, *supra* note 156, at app. 5.

community organizations that promote economic development within the GUC neighborhoods, local government officials with responsibility for overseeing the incentive programs, and representatives of financial industry participants, like intermediary investment entities (e.g., CDEs and QOFs), banks and development companies, that facilitated in some way incentive-funded investments in or assistance for target businesses.

To some extent, the student researchers used the professional networks of the Lab's professors to set up interviews. They cold-called other potential interviewees. They also made use of a "snowball" sampling method, in which they asked interviewees if they could connect the student researchers with additional businesses or stakeholders who might have useful insight.[164] All told, the student researchers conducted twenty-eight interviews during October and November 2022. The interviewees fell into the following categories: fifteen representatives of businesses that received incentives, eight representatives of financial industry participants, three government officials, one journalist who covers local use of business tax incentives, and one resident of a GUC neighborhood.

The student researchers used a semi-structured approach to the interviews. The four researchers and two Lab faculty members settled in advance on a common topic-based agenda that everyone agreed to use as a foundation for the interviews. Below is a summary of the agenda:

A. Explain purpose of the study/use of discussion:

(i) To gather input on effectiveness of the incentive programs in spurring economic activity within their neighborhood; and

(ii) To formulate suggestions for policymakers as to whether and how to maintain or revise the design of these incentive programs going forward.

B. Explore Interviewee Background: Discuss experience with businesses in GUC neighborhood(s); other connections to neighborhood(s); experience in receiving, administering, or observing use of place-based development incentives.

C. Discuss Interviewee's Assessment of Program Incentive(s): Ask how the interviewee's business, or how businesses in the GUC neighborhoods with which interviewee is familiar:

(i) used the program incentive(s)?

(ii) found the program incentive(s) essential to conducting the activities the incentive(s) were used to fund?

164. Toni Crouse & Patricia A. Lowe, *Snowball Sampling*, *in* THE SAGE ENCYCLOPEDIA OF EDUCATIONAL RESEARCH, MEASUREMENT, AND EVALUATION (Bruce B. Frey, ed., 2018), https://methods.sagepub.com/reference/the-sage-encyclopedia-of-educational-research-measurement-and-evaluation/i19094.xml.

(iii) found the incentive difficult/easy to obtain and use?
(iv) feel about using this or similar type of incentive again?

D. Discuss Interviewee's Assessment of How Program Incentive(s) are Impacting GUC Neighborhood(s): Ask interviewee:

(i) how does interviewee think the incentive is impacting the neighborhood, neighborhood businesses, and neighorhood residents (positively or negatively)?
(ii) how specifically are underserved residents benefitting?
(iii) are businesses able to hire from/retain jobs in neighborhood as a result of the program incentive?

The agenda and the questions it contained did not, however, serve as a constraint on the conversation. While using the agenda as the foundation, researchers did not have to stop and re-direct a conversation if it ventured into other pertinent topics. Feedback from the Lab faculty resulted in follow-up questions to interviewees in some instances. Interviews took place by phone, videoconference, and in person. Student researchers prepared extensive notes or transcripts from each meeting—assembling and putting them into a common database maintained by this article's author.

Except for the PPP recipients, potential interviewees were largely receptive to being interviewed, with nearly everyone our researchers contacted agreeing to do so. The student researcher who conducted the PPP interviews attempted to contact, by phone, fifty-two businesses and only seven agreed to a full interview; some of the rest declined to be interviewed, while the majority never picked up the call. The other researchers made greater use of faculty members' professional networks in setting up interviews and that may explain their better yields. All the researchers did some cold calling, however, so this is not a complete explanation. The recipients of the other three program incentives seemed less surprised at being contacted, while some of those our PPP researcher contacted expressed surprise that their receipt of PPP funds was a public record. This may explain the difference.

Before discussing our research findings, I should note some of the limitations and constraints associated with our methodology. First, time and resource constraints did not allow our teams to systematically reach out to all GUC incentive program participants. Our pool of interviewees was disproportionately represented by those that the Lab faculty members knew and those incentive recipients and other knowledgeable individuals who were easiest to contact and most receptive to a cold call. Thus, it cannot be asserted that our research findings reflect the opinions of a representative sample or a majority of potential interviewees.

Second, our data collection method for Phase Two of our research depended entirely on respondent recall. The accuracy of the answers that respondents gave to our questions about their use or other knowledge of program incentives could have been compromised by time, hindsight, or bias.

It is also worth noting that, by design, law students conducted the interviews that led to our findings in Phase Two. Although Lab faculty members supervised the students' work and, as noted above, agreed with the student researchers on a common interview agenda, all the faculty members and student researchers were new to qualitative data collection. Inevitably, our own biases and inexperience with this model of research impacted our data collection, as did our researchers' individual interviewing styles. Furthermore, we did not engage in any weighting of interviewee responses, as someone with more experience with this data collection method may have done. With these limitations and constraints in mind, we still felt there was significant value in the data we gathered and in experimenting with using qualitative data to identify trends and perspectives on incentive program use to inform recommendations for program design.

V. RESEARCH FINDINGS

Our team's research and interviews resulted in reports totaling over 100 pages. Of course, this amount of information goes well beyond the scope of an article of this nature. In this section, I have condensed our research findings into individual incentive program summaries and overall takeaways. This approach reflects the outline of the presentation our team made to local policymakers and industry professionals in December 2022 during which we reported on our research results.

A. Incentive Program Summaries

To keep the summaries comparable from program to program, we organized the findings based on four topics, which are roughly consistent with the interview agenda described in Part IV of this article. The topics are: (i) the types of businesses and projects the incentive program supported, (ii) whether the incentive acted as a "but for" factor with respect to the business or project action it supported (i.e., the action would not have occurred "but for" the incentive), (iii) whether the incentive program selection process emphasized community benefits and whether the use of the incentive actually resulted in community benefits, and (iv) the ease/difficulty of accessing the incentive.

1. Opportunity Zones

We examined ten projects in the GUC neighborhoods that attracted investors seeking OZ tax benefits between 2018 and 2021 (approximately).[165] As explained in Part IV, we relied on the list of OZ investors who applied for and obtained the Ohio Opportunity Zone tax credit to assemble our list, and thus, our list of projects is probably under-inclusive.[166] We did not, however, discover any reason to believe that the list was unrepresentative of the mix of types of OZ-funded projects in the GUC overall.

Of the ten projects, four are completely or primarily residential real estate projects (and best described as high-end or, at the very least, market-rate).[167] Three of these real estate projects are located in University Circle itself, where market-rate is expensive relative to the surrounding GUC neighborhoods.[168] Of note, the other six projects, each of which are either not residential at all or are mixed-use with a significant non-real estate component, are dispersed more broadly throughout the GUC. None of these six projects are in University Circle.[169] Of these six projects, three appear to be direct investments in individual for-profit businesses (a cold storage facility, an experiential/immersive entertainment venue, and a catering business). The others include a Cleveland Clinic-owned biorepository, a commercial real estate project involving several local business tenants, and a mixed-use real estate development that includes a large grocery store.[170] In other words, the GUC OZ projects seem to involve a greater diversity of types of projects, including more investments in operational, job producing businesses, than commentary and research on OZ investments nationally might have predicted.

As to the question of whether the Opportunity Zone tax incentives operate as a "but for" factor in whether development projects go forward, our interviewees were skeptical. The eight interviewees were a mix of real

165. 2018 was the first year that the Ohio Opportunity Zone Credit was available. The State of Ohio's Department of Development uses a July 1–June 30 fiscal year for its annual reports. Accordingly, it was not possible to decipher if Opportunity Zone tax credits applied for during fiscal year 2022 occurred during the second half of 2021 or the first half of 2022. It's possible that some of the GUC OZ projects our team examined applied for tax credits during the first half of 2022.

166. Our lead student researcher for Opportunity Zones searched for public records and media reports of other OZ projects in the GUC and did not find any. *See* Chad Weisman, Opportunity Zones in Greater University Circle: Incentive for Development or Windfall for Developers? 4 (Nov. 30, 2022) (unpublished manuscript) (on file with author).

167. A few of these projects include ancillary non-residential components like first floor retail and parking. One includes a hotel.

168. *See* FISCAL YEAR 2022 REPORT, *supra* note 156, app. 11 at 146; 2021 FISCAL REPORT, *supra* note 156, app. 5 at 146; Weisman, *supra* note 166, at 5–6.

169. *See* FISCAL YEAR 2022 REPORT, *supra* note 156, app. 11 at 146; 2021 FISCAL REPORT, *supra* note 156, app. 5 at 146; Weisman, *supra* note 166, at 5–6.

170. *See* FISCAL YEAR 2022 REPORT, *supra* note 156, app. 11 at 146; 2021 FISCAL REPORT, *supra* note 156, app. 5 at 146; Weisman, *supra* note 166, at 5–6.

estate developers, business owners, bank officials and other industry participants and observers involved in or familiar with the GUC OZ projects. They characterized the Opportunity Zone tax breaks with phrases like "add-on," "not substantial enough" to drive a deal and "not determinative" and indicated that this is a common opinion within the development community.[171] That is not to say the availability of the incentives had no impact on certain development decisions. For example, one interviewee observed that a developer might choose to site a project they had already decided to pursue on one block versus another in order to get into an Opportunity Zone census tract.[172] Another observed that the incentive might attract out-of-state investors to park funds in real estate within Opportunity Zones, especially in OZ census tracts where home values are increasing, in what the commentator referred to as census tract "tax havens."[173] But on the question of whether Opportunity Zones have succeeded in drawing capital to economically impactful projects in the GUC that would not have otherwise gone forward, the answer among interviewees was a definitive "no."[174] An investor in one of the GUC Opportunity Zone projects articulated the significance of the incentive this way which seems reflective of the prevailing opinion: "I don't think the Opportunity Zone was the genesis of the development . . . [b]ut it was absolutely the motivation for making a more sincere economic investment."[175] In other words, not a deal driver, but a deal sweetener.

Opinions varied on whether community benefit plays a role in Opportunity Zone investment decisions. This ambivalence seems to be consistent with the design of this incentive program because it does not require demonstration of potential community benefit to receive the associated tax breaks. Opportunity Zones, after all, are premised on the notion that almost any investment in an economically distressed place represents a step forward. So perhaps unsurprisingly, interviewees did not have much to say on the question of whether the process of qualifying for Opportunity Zone tax breaks has a community benefit component.

When asked whether community benefits actually resulted from the GUC OZ projects, interviewees typically focused on incidental benefits. For example, some interviewees observed that some of the higher-end real estate projects replaced blighted or vacant property in GUC neighborhoods and have brought doctors, nurses, and other medical professionals closer to

171. Weisman, *supra* note 166, at 11, 15–18.
172. *Id.* at 17–18.
173. *Id.* at 18–19.
174. *See id.* at 17.
175. Michelle Jarboe, *Opportunity in New Areas: Developers Bet on City's East Side*, CRAIN'S CLEVELAND BUS., Aug. 15, 2022 (quoting Pietro, a principal at Cushman & Wakefield-Cresco Real Estate).

the communities they serve, which could ultimately benefit everyone who lives in the GUC.[176] Another noted that the cold storage facility built along Cleveland's new Opportunity Corridor fills a critical gap in the market and will save transportation costs for local food processing companies. Often, these companies have had to send inventory several hours away for freezing or refrigeration, only to then have to ship it again to its ultimate destination.[177] A new grocery store in the Fairfax neighborhood eliminates a previous food desert and will undoubtedly make life better for nearby residents.[178] Some of these developments will create jobs and inject consumer dollars into GUC neighborhoods, and may even attract additional investment. Yet interviewees, by and large, did not feel the OZ incentives necessarily return enough to economically distressed communities to justify the tax breaks provided.[179] Interviewees opined that projects seeking OZ program incentives should be vetted more carefully and incentives should be offered more selectively to draw projects that deliver more demonstrative community benefits and that would not otherwise happen.[180]

Interviewees were of two minds about the ease and accessibility of the Opportunity Zones incentives to investors. Consistent with their sentiments about community benefits, the prevailing feeling was that the incentives were too lucrative and readily available for investments during the first few years of the program and after Treasury Department regulations clarified the program's parameters.[181] That said, capital lockup concerns, associated with the extended periods of time investors needed to keep the funds invested in Opportunity Zones census tracts, made high-end real estate projects the easiest fit and limited use of Opportunity Zone benefits for other types of projects and businesses. This was the sentiment among national commentators, as well as the interviewees.[182] Around year five, the program seemed to reach a point of inversion, when certainty of the tax benefits associated with Opportunity Zones began to expire.[183] According to a few of the interviewees, this has made investors less apt to make investments in Opportunity Zones as transactional costs associated with investing in QOF's and complying with applicable tax laws now outweigh the tax benefits. This sentiment was not unanimous, however, as at least one of the interviewees noted that the continued availability of a 10-year tax

176. Weisman, *supra* note 166.
177. *Id.* at 20.
178. *Id.* at 8–9.
179. *See id.* at 16–20.
180. *See id.*
181. *See id.*
182. *See supra* notes 91–93 and accompanying text.
183. Weisman, *supra* note 166, at 14.

deferral still makes the incentive attractive to those who were going to invest in long-term projects anyway.[184]

2. New Markets Tax Credits

We examined 42 NMTC projects in the GUC neighborhoods.[185] They involved a remarkably broad array of different types of businesses and other institutions, ranging from direct investments in conventional goods and services businesses (a grocery store, a label manufacturer, a commercial scale bakery) to business incubators to real estate projects (from higher-end to affordable housing) to schools, social service agencies, and community centers.[186] On the one hand, the breadth of projects could be because the NMTC program has been in place since 2001, by far the longest-running among the incentive programs we examined. On the other hand, the NMTC structure allows for the investment intermediaries (the CDEs) to make capital available to both for-profit and nonprofit entities[187] and for investors to extract value from NMTC transactions in ways other than investments becoming profitable.[188] It is also noteworthy that the NMTC projects were spread throughout the GUC, with each of the individual GUC neighborhoods having received at least one NMTC investment, although there was a higher concentration of projects in University Circle and in the area around the Cleveland Clinic.[189]

The seven NMTC interviewees (three representatives of CDEs and four representatives of businesses or institutions that received NMTC funding) were of one voice in response to the question of whether the NMTC funding was essential to the projects with which they were involved; they insisted it was.[190] Interviewees referred to NMTCs as the "true gap filler," the final twenty percent of the project cost that projects typically struggle to obtain and which is critical for funding community-based projects, like worker-owned cooperatives, that conventional lenders do not

184. *Id.* at 14–15.
185. Our starting point was a publicly available CDFI database. *See generally Research & Data*, CMTY. DEV. FIN. INSTS. FUND, https://www.cdfifund.gov/research-data [https://perma.cc/KH2M-QD4H] (last visited Mar. 24, 2024). Our lead student researcher on NMTCs reviewed the websites of local CDEs, news sources, and other publicly available sources to identify NMTC projects initiated since 2020. A list is on file with author.
186. *Id.*
187. *See, e.g.,* Michael I. Sanders, *Practical Issues Facing Nonprofits Structuring New Market Tax Credit Deals*, 29 TAX'N EXEMPTS 30 (2017).
188. *See* Layser, *supra* note 72, at 428.
189. *See* Elena Barone, *NMTC*, GOOGLE MAPS (Nov. 18, 2022), https://www.google.com/maps/d/u/0/viewer?mid=12pDJ4_LtcGUXrucGWhevyQVdCUhPPEw&ll=41.50107456660517%2C-81.63136932169539&z=14.
190. *See* Elena Barone, New Markets Tax Credits: A Benefit to Greater University Circle 19–21 (Fall 2022) [hereinafter New Markets Tax Credit] (unpublished manuscript) (on file with author) (summarizing interviewee responses to "but for" question).

necessarily understand.[191] Each interviewed representative of an organization that received NMTC funding recounted some way in which the project at issue would not have moved forward "but for" this financing, or would have required a use of alternative funding that may have hindered future projects. In fact, one representative of a CDE indicated that the CDFI Fund now performs a "but for" analysis in reviewing the projects submitted by CDEs for NMTC credit allocations and that CDEs, in turn, take this into account in deciding which projects they pursue.[192]

The NMTC interviewees, by and large, also gave the program high marks for requiring a strong demonstration of community benefits likely to follow from an NMTC investment as part of the application process. The consensus among the interviewees was that the program's annual cap on tax credit allocation also fosters productive competition among CDEs in selecting projects.[193] Over the life of the program, the CDFI Fund has awarded tax credit allocation authority in response to less than one-third of the CDE applications.[194] Accordingly, CDEs carefully search out projects that clearly demonstrate benefits to low income communities; for example, one interviewee said that CDE's do not just ask a business that seeks funding how many jobs it will create, but also how many of them are "quality" and "accessible" jobs.[195]

Interestingly, the perspective of some of the CDE interviewees is that the NMTC program has become more competitive over time in this respect. CDE's have become better at navigating the program and preparing applications, and the CDFI has become increasingly sophisticated in selecting projects. The end result is that certain projects that received NMTC funding earlier in the lifespan of the program would probably get squeezed out now by projects that could make a stronger demonstration of community benefit.[196]

A related observation is that the CDFI Fund looks for projects that blend both community benefits and viable economic development, but sometimes the Fund tilts in the direction of favoring one or the other. A noteworthy percentage of GUC NMTC projects involve nonprofit organizations that provide a vital community service (*e.g.*, an expansion of a hotel for family members of sick children who are patients at one of University Circle's hospitals) but are not necessarily significant job

191. *Id.*
192. *Id*. *See, e.g.,* Teresa Garcia, *Experts Discuss Hot NMTC Compliance Topics*, NOVOGRADAC (Mar. 7, 2019), https://www.novoco.com/periodicals/articles/experts-discuss-hot-nmtc-compliance-topics (reporting on expert panel commenting that the CDFI Fund was considering requiring a but for analysis in NMTC allocation in response to a GAO report on NMTCs).
193. New Markets Tax Credit, *supra* note 190, at 21.
194. *See* INTRODUCTION TO NMTC, *supra* note 107, at 34.
195. New Markets Tax Credit, *supra* note 190, at 21.
196. *See id.*

creators. In this respect, NMTCs might be viewed as an inducement for impactful projects, broadly speaking, rather than exclusively an economic development incentive. This may actually be considered a negative if the principal goal on which it is being assessed here is spurring economic activity.[197]

The NMTC program scored significantly lower among interviewees on its ease of accessibility and scalability. Clearly, the consensus among the interviewees as to the downside of the extensive scrutiny and competition involved in successfully obtaining NMTC funding is the amount of time, cost and effort involved in the application process. These transactional costs do not end when the organization learns its project will be funded, but rather, extend to legal and accounting costs associated with papering all of the transactions and ongoing compliance with IRS rules and regulations necessary for investors to qualify for intricately designed tax credits. A typical project involves a team of expensive professionals familiar with NMTCs, including consultants, accountants, and lawyers. For this reason, NMTC investments of less than $4 million typically don't "pencil out" (*i.e.,* the projected costs exceed the projected benefits), which makes it challenging for small businesses and organizations with more limited funding needs to take advantage of the program.[198]

3. Neighborhood Transformation Initiative

As discussed in Part III, NTI stands out as a hyper-local collection of governmental incentives and investments, limited to a small number of high potential sections of mostly GUC neighborhoods. Each NTI project is carefully targeted to meet a specifically identified economic development need within the selected location. The most visible and oldest NTI economic development project is the retail incubator located in Glenville's Circle North mixed-use building. This project was our team's research focus. The aptly-named "GlenVillage" retail incubator was born of the hope that attracting new, small retail businesses with technical assistance to a subsidized and supportive space like GlenVillage would help the business owners overcome expensive startup costs that can be insurmountable hurdles to entrepreneurship.[199] Program advocates also hoped the project would fill in vacant and underutilized land in Glenville and revive a formerly vibrant neighborhood retail corridor.[200]

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197. *See id.* at 26.
198. *Id*. at 26–27.
199. See *supra* Part III.B.3.
200. REPORT TO COUNCIL 2018, *supra* note 116, at 31; CITY OF CLEVELAND: DEP'T OF ECON. DEV., REPORT TO COUNCIL 38 (2019) (on file with author).

Since its grand opening in January 2020, GlenVillage's retail businesses have typically included a mix of small business restaurants, coffee shops, barber shops and hair stylists, and clothing and accessories stores.[201] Our lead student researcher for NTI interviewed a collection of these business owners, local government employees familiar with the administration of the business incubator, and a community resident.[202]

From the interviews, it seemed apparent that acceptance into the NTI retail incubator was a "but for" factor in the businesses deciding to come to Glenville. The program offered an enticing mix of lease payment subsidies, financial support for individual business space build-out costs, and technical and marketing assistance. It was clear that the business owners viewed this type of assistance as important to launching their businesses or opening them in a new location.[203] Competition for the incubator was rigorous, with 185 applications for seven spots.[204] The business owners interviewed recounted their initial hopes that GlenVillage's location—on the ground floor of a gleaming new residential building and within a short distance of University Circle anchor institutions—would connect them to a coveted customer base.[205]

The answers to questions having to do with community benefit associated with the incubator—both whether the program effectively assessed it in selecting the businesses and whether the incubator has actually resulted in sustained community benefit—are more complicated. There seemed to be little question that the City put considerable effort into vetting applicants for the incubator to select those it thought would be a good fit for Glenville and ultimately succeed.[206] All of the selected businesses were minority owned, an important consideration in a neighborhood that is 93 percent minority, and several had an established following in other locations, which program designers thought would be good for foot traffic.[207] Unfortunately, the foot traffic never materialized (at least by time of our team's research, which occurred during the second half of 2022). Some portion of the blame for this has to go to the COVID-19 pandemic that paralyzed in-store business traffic nationwide from early 2020 until late 2021, and persists to some extent until present day.[208] Beyond that,

201. GLENVILLAGE, *supra* note 126.

202. David Bauman, Cleveland's Neighborhood Transformation Initiative 8 (Dec. 2, 2022) (unpublished manuscript) (on file with author).

203. *Id.* at 8–12.

204. *See* Ball, *supra* note 129.

205. Bauman, *supra* note 202, at 10.

206. *Id.* at 15.

207. Ball, *supra* note 129.

208. *See, e.g.,* Daniel Dorfman, *Retail Trade Employment: Before, During, and After the Pandemic*, BEYOND THE NOS., Apr. 2022, https://www.bls.gov/opub/btn/volume-11/retail-trade-employment-before-during-and-after-the-pandemic.htm#:~:text=During%20the%20COVID%2D19%20pandemic,contactless%20shopping%20and%20curbside%20pickup.

however, interviewees cited a continuing lack of traffic in the incubator retail stores from Glenville neighborhood residents, residents of Circle North, and employees of nearby anchor institutions.[209] While it would be difficult to arrive at a reliable conclusion without a comprehensive neighborhood survey, theories among the interviewees included a perception of the GlenVillage physical space as uninviting (a "mall"), a lack of familiarity among potential customers as to the purpose of the space and nature of the stores, and a mismatch of what the stores offer and the needs of the neighborhood.[210]

Apathy around GlenVillage extends to hiring in the community, which otherwise could be seen as a community benefit. Two out of the three business owners interviewed indicated a lack of interest among neighborhood residents in working at GlenVillage. One owner observed that the retail space is windowless and cramped, and the foot traffic minimal, making it a place any potential employee, whether from Glenville or not, would find unappealing to work.[211]

As of the end of 2021, only three of the original seven businesses remained.[212] Nevertheless, interviewees offered several pieces of additional, more optimistic, insight about the NTI program, especially as it relates to future prospects for the retail incubator. First, several noted that community residents that enter the retail space overall express enthusiasm about the positive impact that the presence of the newly constructed building, which sits on formerly vacant land, has had on the neighborhood. To the extent interviewees criticized the NTI program itself, it primarily had to do with marketing, with several wondering if retail activity would be greater had the program devoted more attention to marketing to the neighborhood and nearby employees than it had on building out the physical space. Interviewees, by and large, expressed optimism that the next round of incubatees at GlenVillage would likely be more successful than the first round if marketing improves and simply by virtue of not launching during a pandemic or while construction on the overall Circle North project was underway. Finally, a few noted that as the housing market in Glenville continues to strengthen, in part due to other NTI programs, the demand for retail on East 105th Street should likewise increase. In other words, a stable housing market is important for a thriving retail market.[213]

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209. Bauman, *supra* note 202, at 8–10.
210. *Id.*
211. *Id.*
212. For some perspective, "20.8% of private sector businesses in the U.S. fail within the first year. After five years, 48.4% have faltered." *See generally* Devon Delfino, *The Percentage of Businesses that Fail—and How to Boost Success Chances*, LENDINGTREE, https://www.lendingtree.com/business/small/failure-rate/ (last updated May 8, 2023) (citing U.S. Bureau of Labor statistics).
213. *See* Bauman, *supra* note 202, at 3.

4. Paycheck Protection Program

As noted earlier in this article, our research revealed that an estimate of 6,239 GUC businesses received a total of 7,435 disbursements during the life of the Paycheck Protection Program.[214] These disbursements were spread throughout the GUC, with a fairly predictable concentration of disbursements along commercial corridors.[215] PPP rules limited which businesses could apply to those with 500 or fewer employees.[216] Strikingly, a very large percentage (83 percent) of GUC PPP recipients had only one employee; the applicant was either a sole proprietor, self-employed, or an independent contractor.[217] Our lead researcher reached out to fifty-two GUC recipients, with the goal of having an interview pool that had some diversity in terms of business size and funding amount received.[218] Ultimately, representatives from seven businesses agreed to an interview—a museum, a small manufacturing business, a technology startup, a family-owned food manufacturer, a hospital related nonprofit (coincidentally, an organization that also benefited from NMTCs), a printing company, and a bookkeeping and business support company.[219] The businesses ranged in size from two to 397 employees, with all but one employing fewer than twenty-five workers, which seemed reasonably representative of GUC PPP recipients as a whole.[220]

For purposes of the PPP, our lead researcher tied the "but for" question to the most explicit purpose of the program—whether PPP forgivable loans allowed the businesses to retain employees notwithstanding the severe economic downturn precipitated by the COVID-19 pandemic.[221] The response was very positive. Five out of seven interviewees reported that it was essential to retaining jobs. The largest of the interviewed businesses had even begun laying off employees and used the PPP funds to hire back those employees and keep them employed. The other two interviewees reported that their PPP funding was helpful, but "maybe not essential."[222] They said that this characterization was related to having received a relatively small amount of PPP funding or because their company had few employees at the time.[223] Organizations that received larger amounts of PPP funding considered that funding essential to retaining their

214. *See* Robie, *supra* note 147.
215. *Id.*
216. *See supra* Part III.B.4.
217. *See* Robie, *supra* note 147, at 6.
218. *Id.* at 13–14.
219. *Id.* at 21–22.
220. *Id.*
221. *Id.* at 26.
222. *Id.*
223. *Id.*

employees.[224] Although we did not frame the question in this way, it is not a significant stretch to infer that PPP funding allowed at least some of the recipients to stay in business at all, as an inability to retain employees would have ultimately impaired viability.

Earlier in this article, I explained that qualification for receipt of the various tranches of PPP loans and for eventual forgiveness of these loans were both relatively easy bars to clear and that this type of easy qualification/widespread distribution model was closely tied to the incentive's explicit purpose: allowing smaller-sized businesses to expeditiously access funds to retain employees during the worst phases of the pandemic.[225] This type of delivery model is in a sense similar to Opportunity Zones in that it assumes that an infusion of business assistance funds at large will alleviate the targeted economic distress. Some commentators have called into question whether the PPP model, with its reliance on banks to administer program funds, in fact equitably distributed funds among the businesses with fewer resources.[226] Our interviewees tended to echo these concerns. Several noted that elaborate bank processes for accessing the funds or biases that banks had in favor of pre-existing clients with bigger payrolls and greater in-house financial expertise hampered the ability of smaller businesses like theirs to access the funds, especially during the first tranche.[227]

As to whether interviewees believed that the PPP funding they received, or that other employers received, benefited the GUC neighborhoods, the answers varied. Some expressed that they did not perceive a significant direct benefit to the neighborhood, reasoning that their employees commute from a wide area and, therefore, employee payroll money flowed to the wider areas where they live, especially for those that had employees working remotely.[228] Others wondered how much a neighborhood benefits from a business that primarily transacts with out-of-town businesses.[229] Other interviewees thought that the PPP funding benefited the GUC neighborhoods when their businesses employed GUC residents or directly provided services within the GUC.[230] Each of these answers seemed to call into question the premise that uniform incentives to all businesses located within a neighborhood will benefit the neighborhood equally; the interviewees clearly recognized the difference between

224. *Id.*
225. *See supra* Part III.B.4.
226. *E.g.,* Brook E. Gotberg, *Small Business Disaster Relief and Restructuring*, 131 YALE L.J. F. 388, 389–90, 395 (2021).
227. Robie, *supra* note 147, at 23–24.
228. *Id.* at 27.
229. *Id.*
230. *Id.* at 27–28.

businesses that are rooted in a neighborhood and those that are not in terms of generating substantial community benefit from their operations.

Finally, as to the ease and accessibility of the PPP, a critical feature of a program that the federal government hoped would quickly and efficiently disburse relief funds, the response of the interviewees was, perhaps surprisingly, mixed. At the front end of the process, some of the interviewees applied for and accessed funds quite easily. Others indicated that the banks facilitating disbursement of the funds required "ridiculous documentation," seemed caught up with "minutiae questions that didn't seem relevant" and that the whole process caused material delays that resulted in some of the interviewed businesses missing the first tranche of funds.[231]

On this point, there seemed to be a distinction between the largest business interviewed, which had an in-house staff for seeking grants and had contacts within the Small Business Administration who helped the business navigate the application, and some of the smaller organizations, which had to hire and familiarize outside consultants to assemble the necessary paperwork.[232] All of the interviewees reported relative ease in receiving PPP funds once their applications had been approved.[233] On the back-end, however, the interviewees again expressed mixed opinions in terms of the ease or difficulty of demonstrating that they qualified for loan forgiveness.[234] While the above reactions might suggest a program that was too difficult for the least sophisticated and resource strapped businesses in the GUC, the fact that 83 percent of GUC PPP recipients had only one employee belies this. Moreover, one might expect that the administration of a program like the PPP would improve with time and experience.

B. Overall Takeaways for Incentive Program Design

After completing Phases One and Two of the research methodology described in Part III of this article, each of our researchers prepared a report on the incentive program on which they took the lead for review by their colleagues and the faculty members. After reviewing the reports, we met to discuss the findings. From these discussions emerged the following points of consensus related to program design for government incentives to spur economic development in economically distressed communities.

The four incentive programs reflected a philosophical divide between incentives aimed at business activity at large within a designated community (Opportunity Zone and the PPP) and those that require a

231. *Id.* at 23–24.
232. *Id*. at 24–25.
233. *Id.* at 25.
234. *Id*. at 25–26.

demonstration by incentive recipients of specific community benefits resulting from their use of the incentive (New Markets Tax Credits and Neighborhood Transformation Initiative). In my prior scholarship, I have referred to these qualities as an important part of the difference between blunt incentives and smart incentives, respectively. Our research revealed a fairly strong preference among interviewees toward smart incentives over blunt ones. Opportunity Zones, in particular, drew criticism as the type of incentive that wastes a significant amount of tax dollars on projects like high-end real estate development that ultimately do less to alleviate economic distress. Conversely, New Markets Tax Credits drew praise for rewarding projects that demonstrate a strong likelihood of positively impacting the community.

Another component of New Markets Tax Credits and the Neighborhood Transformation Initiative that interviewees praised is the use of competition among potential incentive recipients in securing the incentives. In particular, the design of the NMTC allocation process—where community-based CDEs analyze and filter the project and business candidates they put forward and the CDFI Fund then chooses among the best portfolios of CDE applications to allocate credits—received considerable acclaim among interviewees as a way of matching limited government dollars with projects that have the greatest potential for positive community impact.

At the same time, however, interviewees disliked complexity and red tape associated with pursuing and using program incentives. In this respect, NMTCs drew the heaviest criticism. Interviewees singled out particular aspects of NMTCs, like the complicated, compliance-heavy process for providing qualifying investors with tax credits and the costly, procedure-heavy process for winning the competition for tax credit allocations in the first place. It is worth noting, however, that none of the four incentive programs completely escaped criticism on this point. Interviewees called attention to the five-year inversion point at which Opportunity Zone tax breaks are no longer worth the red tape associated with securing them, the challenges several encountered in working with banks to apply for PPP funds, and the frustration in getting the NTI program to focus on adequately marketing businesses.

Of particular note, several interviewees mentioned the potential for incentive programs to evolve and improve over time based on experience and viewed more favorably those programs that seemed particularly well positioned to adapt. The NMTC program drew praise for its built-in accountability and willingness to adopt recommendations offered by government watchdogs, with several interviewees opining that the program had become more effective at selecting impactful projects over time. This sentiment seemed to emanate from a sense that policymakers don't always hit the target on the first try. Granted, the NMTC has been in existence for a considerably longer period than any of the other program incentives. Still, it could serve as a model for other development incentive programs in establishing a structure that facilitates evaluation and adaptation. Most interviewees with knowledge of the NTI program believed that subsequent rounds of retail businesses that set up in the GlenVillage incubator would experience more success based on their confidence that program administrators would make changes based on lessons learned during the first round. Several of the PPP interviewees noted improvements with each subsequent tranche of the program as legislators recognized and attempted to address issues from the initial tranches.

VI. Conclusion

Qualitative research techniques provide an important complement to simply reviewing and comparing quantitative indicators of economic well-being when assessing the performance of public sector economic development incentives in economically distressed neighborhoods. In complex urban environments like the GUC, deciphering causation associated with the availability of economic development incentives and assessing nuanced, multi-factor concepts like "community benefit" can be difficult to do by merely examining changes in statistics like neighborhood median income. The qualitative research our team conducted was limited in scope and subject to shortcomings associated with conducting this type of research, especially in the context of a single semester law school class. Nevertheless, our team's research illuminated how economic development incentives are performing in the GUC and neighborhoods like it and what features of these incentives seem to be working. Hopefully, it encourages those interested in this type of legal and policy research to bring studies like these to scale and legislators and policymakers to consider the results of this type of research when crafting future incentive programs.