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## You Cannot Afford to Live Here

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## YOU CANNOT AFFORD TO LIVE HERE

Courtney Lauren Anderson\*

### ABSTRACT

*The simplicity of defining affordable housing at thirty percent of household income provides a uniform barometer by which to measure whether or not a family or individual is spending more than an acceptable portion of funds on housing. However, it fails to capture what tradeoffs are given in exchange for spending this thirty percent, which is particularly relevant when analyzing the type of housing available to low-income and extremely low-income renters. Furthermore, the shortage of government-subsidized affordable housing units means that private landlords are filling in the affordable housing gap. The housing provided by private landlords is, by necessity, usually located in low-income areas. While this is often true of government-subsidized housing, there have been recent developments of the Fair Housing Act (FHA), most importantly the recognition of disparate impact under the Act and the assertion that the perpetuation of segregation by concentrating affordable housing in low-income areas may trigger this disparate impact. Living in higher-income areas provides numerous benefits to families, including increased educational opportunities for children. Yet, the continued use of a binary and formulaic approach to determine if housing is affordable more deeply entrenches the divide between “protected affordable housing,” the government-subsidized housing that is the subject of fair housing progression, and “unprotected affordable housing,” housing that is lower in price and outside of the reach of the FHA developments. Inclusion of unprotected affordable housing in data collection efforts by the Department of Housing and Urban Development (HUD) and other housing agencies will provide a more accurate picture of affordable housing in the United States, allowing for targeted solutions to address the affordable housing shortfall.*

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\* Assistant Professor of Law at Georgia State University College of Law. I would like to thank Ezra Rosser and my Property and the Challenge of Affordable Housing co-panelists at the 111th AALS Annual Meeting for the opportunity to present these topics to our colleagues, and for their helpful feedback.

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## INTRODUCTION

Thomasville Heights sits in a southeast corner of Atlanta, Georgia, one of the fastest growing cities in the country. While the rest of the metropolis has experienced positive growth and neighborhood revitalization over the last couple decades, the Thomasville Heights neighborhood remains plagued by a dearth of affordable housing, triggering long-term negative consequences in the area. Georgia is meeting only twenty-eight percent of the affordable housing needs of extremely low-income tenants—households with an income that is thirty percent or less than the area’s median income.<sup>1</sup> One symptom of this housing crisis is high turnover rates in the public school education system. A study of Thomasville Heights Elementary School exposed the deterioration of the school system caused by the prevalence of unprotected affordable housing in the city.<sup>2</sup> Thomasville Heights is just one example that embodies the adverse effects housing instability can have on academic achievement.

Excessive evictions and substandard conditions have created hyper-mobile families, resulting in the extraction of children from their homes and schools. Unfortunately, the educational attainment, earning power, and quality of life that are positively correlated with it, suffer when families cannot afford safe housing. To comprehensively understand the affordable housing crisis,<sup>3</sup> the meaning of affordable housing and, specifically, the formula upon which this meaning relies, must be explored and questioned.

1. See NAT’L LOW INCOME HOUSING COAL., THE GAP: THE AFFORDABLE HOUSING GAP ANALYSIS 2016, at 2, 18 (2016), [http://nlihc.org/sites/default/files/Gap-Report\\_print.pdf](http://nlihc.org/sites/default/files/Gap-Report_print.pdf) [<https://perma.cc/WC7Q-CJFL>].

2. See generally Atlanta Volunteer Lawyer’s Foundation et al., Presentation, *Housing Instability and Student Transiency in the Thomasville Attendance Zone* (June 2, 2016) [hereinafter *Housing Instability*] (slides on file with author).

3. DAN IMMERGLUCK, ANN CARPENTER & ABRAM LUEDERS, DECLINES IN LOW-COST RENTED HOUSING UNITS IN EIGHT LARGE SOUTHEASTERN CITIES 3, (Fed. Res. Bank of Atlanta ed., 2016), <https://www.frbatlanta.org/-/media/documents/community-development>

The Thomasville Heights study shows that impoverished families live in impoverished neighborhoods with impoverished schools.<sup>4</sup> While this troubling reality is not novel, the study made clear that affordable housing is as unstable as the availability of affordable housing. The adverse effects of living in a low-income neighborhood exceed physical housing, yet the definition of affordable housing fails to encapsulate this fact. This creates an inherent falsehood in the creation and labeling of affordable housing, which is particularly troubling for de facto affordable housing—meaning, “unprotected affordable housing.” This is housing that is affordable to low-income persons only because its physical conditions and surroundings are repugnant and uninhabitable by those who can avoid it, but remain occupied only because of its price and because the government has failed to supply enough suitable alternatives. In recent years, even as government agencies and the Supreme Court increased and clarified the FHA’s enforceability and expanded methods to challenge segregated housing,<sup>5</sup> this de facto affordable housing remains “unprotected,” while government subsidized housing benefits from the increasingly progressive view of inclusive housing.<sup>6</sup>

This Article is the first to assert that these units of “unprotected affordable housing” remain susceptible to continued isolation and socio-economic harms. While “protected affordable housing” reaps the benefits of being affordable to low-income persons, receiving increased government attention on creating affordable housing outside of low-income areas, and being near amenities that enhance residents’ quality of life, “unprotected affordable housing” must remain in lower-income neighborhoods to maintain a low monthly rate. At the center of this vulnerability is the stagnant, yet accepted definition of affordable housing. Despite the Supreme Court mandate to create more inclusive living patterns in the

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/publications/discussion-papers/2016/03-housing-declines-in-low-cost-rented-housing-units-in-eight-large-southeastern-cities-2016-05-10.pdf [https://perma.cc/DR3S-G23Z] (“[T]he total rent-burdened share rose from 2010 to 2014, and the share of lower-income renters with rent burdens rose in all eight cities. The greatest increases were in Memphis (4.9 percent), Jacksonville (4.2 percent), Atlanta (3.6 percent), and Nashville (3.5 percent).”).

4. See generally *Housing Instability*, *supra* note 2.

5. See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2523-24 (2015); *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91-92, 570, 574, 576, & 903).

6. Low-income housing tax credits were the subject of a recent Supreme Court case that recognized disparate-impact claims are within the Fair Housing Act. See *Inclusive Communities*, 135 S. Ct. at 2510.

United States,<sup>7</sup> the basis of determining what Americans can afford remains dangerously outdated.<sup>8</sup>

The shortage of affordable housing in the United States remains pervasive. In 2013, thirty-four affordable housing units were available for every one hundred extremely low-income tenants, which represents a doubling of the affordable housing shortfall for this population in ten years.<sup>9</sup> The lack of affordable housing forces families into housing that fails to meet basic quality standards<sup>10</sup> and that is not part of a comprehensive government affordable housing policy. These housing units are examples of “unprotected affordable housing.” Unprotected affordable housing is housing that meets the income-based definition of affordable housing, but only because the housing units lack basic amenities or have unsanitary or unsafe elements that explain the private landlord’s lowering of the price. Unprotected affordable housing contrasts sharply with “protected affordable housing.” Protected affordable housing units are subsidized in full or in part by the government, and benefit from increased scrutiny and safeguards instituted by the Supreme Court and HUD.<sup>11</sup> Protected affordable housing certainly can—and often, does—suffer from the dilapidated conditions and segregated nature that plagues unprotected affordable housing. However, the purpose of this Article is to explore how advances in affordable housing and fair housing policy fail to include unprotected affordable housing. This failure underscores how the affordable housing calculation is especially meaningless for the many who reside in this sub-category of affordable housing. Education is one example of an excluded area that has a profound economic impact on unprotected affordable housing residents.

Part I of this Article provides a historical overview and critique of the commonly accepted definition of affordable housing. Part II provides a

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7. See generally *id.* at 2551.

8. See MICHAEL STONE ET AL., *THE RESIDUAL INCOME APPROACH TO HOUSING AFFORDABILITY: THE THEORY AND THE PRACTICE* 22-27 (Austl. Housing Hous. & Urb. Res. Inst. ed., 2011), [https://www.ahuri.edu.au/\\_\\_data/assets/pdf\\_file/0011/2810/AHURI\\_Positioning\\_Paper\\_No139\\_The-residual-income-approach-to-housing-affordability-the-theory-and-the-practice.pdf](https://www.ahuri.edu.au/__data/assets/pdf_file/0011/2810/AHURI_Positioning_Paper_No139_The-residual-income-approach-to-housing-affordability-the-theory-and-the-practice.pdf) [<https://perma.cc/B9NP-97Y9>].

9. Liza Doran, *Report: Affordable Housing Increasingly Unavailable to Low-Income Renters*, NAT’L ALL. TO END HOMELESSNESS (July 21, 2015), <http://www.endhomelessness.org/blog/entry/report-affordable-housing-increasingly-unavailable-to-low-income-renters> [<https://perma.cc/NP4T-PH8D>].

10. See CRAIG POLLACK ET AL., *WHERE WE LIVE MATTERS FOR OUR HEALTH: THE LINKS BETWEEN HOUSING AND HEALTH* 5 (Robert Wood Johnson Found. ed., 2008), [http://rwjfsp.unc.edu/about/news/Pollack\\_RWJF\\_10032008.pdf](http://rwjfsp.unc.edu/about/news/Pollack_RWJF_10032008.pdf) [<https://perma.cc/S9JR-6R3E>].

11. See generally *Inclusive Communities*, 135 S. Ct. at 2510-12; *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91-92, 570, 574, 576, & 903).

brief overview of recent movements to increase the effectiveness and enforceability of the FHA, with a focus on how these policies impact affordable housing. The connection between education and affordable housing is well documented. However, by focusing on a specific neighborhood surrounding Thomasville Elementary, Part III illustrates the exacerbation of poor education on those residing in unprotected affordable housing. The prevalence and characteristics of unprotected affordable housing are described in Part IV, which also emphasizes the role of education in increasing the cost of this living environment to the residents. The conclusion looks forward, predicting how the affordable housing calculation may be revised and underscoring the need to assert a more comprehensive calculation and definition.

### I. DEFINING AND CREATING AFFORDABLE HOUSING

Affordable housing typically signifies “housing that is available at a reduced cost for households with incomes at or below specific levels.”<sup>12</sup> HUD defines affordable housing as “housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities.”<sup>13</sup> This “thirty percent rule” is the current metric used to measure housing affordability—that is, individuals or families who contribute no more than thirty percent of their income towards housing costs are considered to be living in “affordable” housing. Conversely, households paying more than thirty or fifty percent are considered cost-burdened or severely cost-burdened, respectively.<sup>14</sup> The theory behind the thirty percent rule is that paying more than thirty percent of income towards housing fails to leave sufficient funds for other basic needs, such as transportation, food, clothing, and healthcare costs.<sup>15</sup>

#### A. History of the Formula

Although policymakers currently utilize the thirty percent rule to measure several forms of housing affordability, the evolution of this rule and housing affordability metrics generally are traceable back to federal

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12. Michael Floryan, *Cracking the Foundation: Highlighting and Criticizing the Shortcomings of Mandatory Inclusionary Zoning Practices*, 37 PEPP. L. REV. 1039, 1044 (2010) (internal citation omitted).

13. *Glossary of HUD Terms*, HUD USER, [https://www.huduser.gov/portal/glossary/glossary\\_a.html](https://www.huduser.gov/portal/glossary/glossary_a.html) [https://perma.cc/UUW3-JQGZ].

14. See *Rental Burdens: Rethinking Affordability Measures*, HUD USER (Sept. 22, 2014), [https://www.huduser.gov/portal/pdredge/pdr\\_edge\\_featd\\_article\\_092214.html](https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html) [https://perma.cc/XE6Q-PNMS] [hereinafter *Rental Burdens*].

15. See *Affordable Housing*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/) [https://perma.cc/8JMJ-S8VZ]; see also *Rental Burdens*, *supra* note 14.

housing policy.<sup>16</sup> In 1937, the first major piece of national housing policy legislation was passed by Congress to provide public housing to low-income families.<sup>17</sup> The National Housing Act of 1937 also provided for income limits for eligibility to qualify for public housing.<sup>18</sup> Specifically, the Act provided that household income could not exceed five times the rent that was being paid for the low-income units.<sup>19</sup> The income limits of the 1937 Act eventually evolved into maximum rent standards, which determined eligibility based on a rent-to-income ratio.<sup>20</sup> The Housing Act of 1949 marked the beginning of subsidized housing programs distinct from public housing units.<sup>21</sup> The 1949 Act continued the use of maximum rents for subsidized housing eligibility.<sup>22</sup>

Despite Congress's attempt to provide affordable housing to low-income households, federal housing legislation faced significant hurdles.<sup>23</sup> The original 1937 Act anticipated that maintenance and operational costs would be covered by rental income; however, the lack of government funding in these areas resulted in a neglect of maintenance and tenant dissatisfaction with living conditions.<sup>24</sup> These issues, coupled with high inflation and decrease in tenant income, led Congress to pass the Brooke Amendment to the 1969 Housing Act.<sup>25</sup> The Brooke Amendment established the predecessor to the HUD's thirty percent rule. Specifically, the amendment required public housing rents to be capped at twenty-five percent of the household's income.<sup>26</sup> In 1981, Congress raised the income cap to the current thirty percent benchmark.<sup>27</sup>

Today, the thirty percent rule is used not only to measure affordability for low-income households, but also as an affordability metric for renters

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16. ERIC S. BELSKY ET AL., MEASURING THE NATION'S RENTAL HOUSING AFFORDABILITY PROBLEMS 13 (Joint Ctr. for Housing Stud. of Harv. Univ. ed., 2005), [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/rd05-1\\_measuring\\_rental\\_affordability05.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/rd05-1_measuring_rental_affordability05.pdf) [<https://perma.cc/7XYM-U78E>].

17. See JA STOLOFF, A BRIEF HISTORY OF PUBLIC HOUSING 3 (U.S. Dep't of Housing & Urb. Dev. ed.) [http://reengageinc.org/research/brief\\_history\\_public\\_housing.pdf](http://reengageinc.org/research/brief_history_public_housing.pdf) [<https://perma.cc/VR7D-K8PV>]; see also MARY SCHWARTZ & ELLEN WILSON, WHO CAN AFFORD TO LIVE IN A HOME?: A LOOK AT DATA FROM THE 2006 AMERICAN COMMUNITY SURVEY 1 (U.S. Census Bureau ed.), <https://www.census.gov/housing/census/publications/who-can-afford.pdf> [<https://perma.cc/F82M-7AN8>].

18. See STOLOFF, *supra* note 17, at 3.

19. See *id.*

20. See SCHWARTZ & WILSON, *supra* note 17, at 1.

21. STOLOFF, *supra* note 17, at 4.

22. See *id.*

23. See *id.* at 10-11.

24. *Id.*

25. *Id.* at 11; see also *Rental Burdens*, *supra* note 14.

26. STOLOFF, *supra* note 17, at 11; see also *Rental Burdens*, *supra* note 14.

27. BELSKY ET AL., *supra* note 16, at 13.

and homebuyers.<sup>28</sup> In addition to its use by HUD to determine housing cost burdens for low-income households, the thirty percent rule has made its way into the lexicon of the private sector home industry.<sup>29</sup> For example, before the 1990s, federal mortgage enterprises refused to purchase mortgages unless the principal, interest, tax, and insurance payment was not greater than twenty-eight percent of the household income.<sup>30</sup> Today, housing counselors and home buying educators utilize the thirty percent rule to determine whether first-time homebuyers can afford their desired housing.<sup>31</sup>

### B. Uses of the Formula

The predominant strength of the thirty percent rule is its simplicity.<sup>32</sup> Specifically, the thirty percent rule can be easily calculated and comprehended.<sup>33</sup> Often, the data upon which the rule is based is readily available and collected from several sources, including the United States Census Bureau and the American Housing Survey.<sup>34</sup> Moreover, this data can be easily broken down into basic geographic categories and subcategories, such as metropolitan areas, states, and counties.<sup>35</sup> Because the thirty percent rule is measured in the form of a ratio, “it can be compared over time” to describe trends in housing affordability and serve as a basis upon which concepts can be developed.<sup>36</sup> This high level of appeal of the thirty percent rule explains why it has become the rule of thumb for most public discourse relating to housing affordability.<sup>37</sup>

The thirty percent rule also lends itself to many uses. In his article, *The Concept of Housing Affordability: Six Contemporary Uses of the Housing Expenditure-to-Income Ratio*, David Hulchanski explores the various ways in which the expenditure-to-income ratio, like the thirty percent rule, is used in North American countries.<sup>38</sup> Specifically, Hulchanski explores six

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28. *Id.*

29. *See* SCHWARTZ & WILSON, *supra* note 17, at 2.

30. *See id.*

31. *See* Melanie D. Jewkes & Lucy M. Delgadillo, *Weaknesses of Housing Affordability Indices Used by Practitioners*, 21 J. FIN. COUNSELING & PLAN. 43, 46 (2010), [https://afcpe.org/assets/pdf/volume\\_21\\_issue\\_1/jewkes\\_delgadillo.pdf](https://afcpe.org/assets/pdf/volume_21_issue_1/jewkes_delgadillo.pdf) [<https://perma.cc/2P5U-XNVT>].

32. *See id.*

33. *See id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *See* BELSKY ET AL., *supra* note 16, at ii-iii.

38. *See generally* David J. Hulchanski, *The Concept of Housing Affordability: Six Contemporary Uses of the Housing Expenditure-to-Income Ratio*, 10 HOUSING STUD. 471 (1995), [http://www.urbancentre.utoronto.ca/pdfs/researchassociates/Hulchanski\\_Concept-H-Affd\\_H.pdf](http://www.urbancentre.utoronto.ca/pdfs/researchassociates/Hulchanski_Concept-H-Affd_H.pdf) [<https://perma.cc/CM3D-HDVC>].



areas that employ the expenditure-to-income ratio: describing household expenditures, analyzing trends and comparing different household types, administering public housing by defining eligibility criteria and subsidy levels in rent-geared-to-income housing, defining housing needs for public policy purposes, predicting a household's ability to pay the rent or mortgage, and selecting households for a rental unit or mortgage.<sup>39</sup>

In describing the use of the expenditure-to-income ratio as a public sector housing eligibility requirement, Hulchanski notes that the ratio is a small scientific measurement used with other complex models upon which policymakers determine public housing regulations.<sup>40</sup> He cautions, however, against utilizing scientific data to answer value-driven questions like defining "the poor" and the ultimate determination of subsidy eligibility requirements.<sup>41</sup> He also describes the divergent uses of the expenditure-to-income ratio in the public sector versus the private sector.<sup>42</sup> In the public sector, the ratio is used as a "maximum income criteria" to prevent higher wage earners from entering low-income housing.<sup>43</sup> Conversely, the private sector utilizes the ratio as a "minimum income criteria" to exclude lower income households from renting or obtaining a mortgage on a home they cannot afford.<sup>44</sup> Hulchanski posits that the public sector's use of the expenditure-to-income ratio is a valid method to identify and exclude high-income households from availing themselves of limited government subsidies.<sup>45</sup> In contrast, he argues that the private sector's use of the ratio is invalid because it fails to accurately measure a household's ability to afford housing costs.<sup>46</sup>

### C. Critiques of the Formula

Despite the pervasive use of the thirty percent rule, it has been widely criticized in many respects. One form of criticism lies in how policymakers have come to define what constitutes "affordable" housing.<sup>47</sup> Housing researcher Michael Stone has noted that affordability, as it relates to housing, is not necessarily an inherent characteristic of an actual dwelling; rather, affordability exists as "a *relationship* between housing and people."<sup>48</sup> This interrelationship between housing and people becomes

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39. *See id.* at 475-76.

40. *See id.* at 479.

41. *See id.* at 480.

42. *See id.*

43. *Id.*

44. *Id.*

45. *See id.*

46. *See id.*

47. *See* STONE ET AL., *supra* note 8, at 2.

48. *See id.*

essential when examining whether technically affordable housing is actually affordable for residents living therein.<sup>49</sup> For example, a family living in subsidized housing that they otherwise could afford may nonetheless incur substantial transportation costs associated with the affordable housing due to its location.<sup>50</sup> Hence, a dwelling may be affordable in the sense of the housing itself, but does not necessarily result in affordable living.<sup>51</sup>

Stone criticizes the widespread use of the thirty percent rule and other types of housing affordability ratios due to their lack of theoretical and logical foundations.<sup>52</sup> Because ratios are mathematically simplistic and based upon “interpretations of empirical studies of what households actually spend for housing,” policymakers can easily apply them across varying circumstances and throughout different periods of time.<sup>53</sup> In turn, legislators and the public have come to accept housing ratios as both “universal and lawful.”<sup>54</sup> Stone also observes that despite the ratios’ purpose of determining whether a family, after paying for housing, has sufficient funds for non-household necessities, the ratios fail to account for whether families can actually afford those non-shelter needs.<sup>55</sup>

As an alternative to the thirty percent rule, Stone advocates for the use of the residual income approach to determine housing affordability.<sup>56</sup> According to Stone, the residual income approach takes into account the fact that the availability of what a family can spend on housing is dependent upon how much income remains after paying for housing costs.<sup>57</sup> As a result, the residual income approach defines housing affordability as a household’s inability to meet non-housing necessities based on “some minimum level of adequacy” after housing costs have been paid out.<sup>58</sup> In contrast to the housing ratio, the appropriate indicator for affordability under the residual income approach is the difference between a household’s income pre- and post-housing costs rather than the ratio.<sup>59</sup>

To illustrate the difference between the residual income approach and the housing ratio, Stone compares two households with similar incomes but

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49. *See id.*

50. *See id.*

51. *See id.*

52. *See id.* at 20.

53. *See id.*

54. *See id.*

55. *See id.* at 20-21.

56. *See id.* at 21.

57. *See id.*

58. *See id.*

59. *See id.* (noting that “the ratio is not a valid indicator of housing need and the ability to pay for housing . . .”).

different household sizes.<sup>60</sup> If Household A contains a single person and Household B contains a family of four, the fact that the two households have the same amount of income does not mean they also share equivalent affordability measures.<sup>61</sup> Because a larger household, like Household B, tends to have more non-housing expenses, it cannot devote as much income towards housing costs as a smaller household of comparable income, like Household A.<sup>62</sup> This generalization reveals that the residual income approach operates as a sliding scale, with affordability varying with “household size, type, and income.”<sup>63</sup> In terms of applying and integrating the residual income approach, Stone explains that its use of a “socially-defined” standard of adequacy means that the approach cannot be applied universally.<sup>64</sup> Rather, the accuracy of the residual income approach is grounded in “space and time” based on the current social norms.<sup>65</sup>

The thirty percent rule is also criticized for its failure to consider a cost of living variable in calculating housing affordability.<sup>66</sup> The cost of living variable would account for the differences in several expenses incurred by most households, including food, shelter, transportation, and other living expenses.<sup>67</sup> Additionally, the cost of living variable helps to illustrate the differences in housing markets located within the states and across the country.<sup>68</sup> Because the thirty percent rule fails to control for housing quality or for variations in household size and location, the cost of living variable can help remedy these deficiencies.<sup>69</sup>

In addition to lacking the cost of a living variable, the thirty percent rule’s overly simplistic method of calculation also fails to account for other important factors that affect housing costs, such as “interest rates, home appreciation, and increases in household utilities.”<sup>70</sup> Moreover, the thirty percent rule’s calculations are based on a household’s present income rather than its permanent income.<sup>71</sup> The current rule’s use of present income presents a difficulty for policymakers to understand and formulate regulations related to affordability because it fails to account for “long-term” affordability; instead, the rule only projects affordability

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60. *See id.*

61. *See id.*

62. *See id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *See Jewkes & Delgadillo, supra* note 31, at 46.

67. *See id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

measurements at a given moment in time.<sup>72</sup> However, policymakers could enact policies and regulations based upon a more nuanced measurement of housing affordability if the thirty percent rule utilized permanent income.<sup>73</sup>

As noted previously, the thirty percent rule measures affordability according to household income as it compares to housing cost.<sup>74</sup> However, simply defining housing cost in terms of amounts paid towards rent or a mortgage insufficiently describes how households actually allocate housing costs.<sup>75</sup> The home selected for housing is dependent on a wide array of considerations unique to each household.<sup>76</sup> For example, the size of a household's down payment relative to the cost of the home and mortgage interest rates are forms of housing costs not encompassed in the thirty percent rule.<sup>77</sup> Moreover, families are not merely choosing housing based on pure budgetary considerations.<sup>78</sup> Instead, households could be engaging in housing tradeoffs, whereby "housing quality, neighborhood quality, and access to jobs and other amenities" are being traded in exchange for cheaper housing.<sup>79</sup> The thirty percent rule also fails to account for these types of tradeoffs in defining what is included in housing cost.<sup>80</sup>

As housing price and quality change can affect housing affordability, the thirty percent rule lacks an accountability component with regard to these types of fluctuations.<sup>81</sup> Hence, the thirty percent rule fails to consider changes in housing cost attributable to improvements in the quality of housing.<sup>82</sup> This becomes important in the area of rising rent costs due to restrictive land use regulations and building codes that prevent builders from constructing "modest rentals [in] high densities per acre."<sup>83</sup> Improvement in quality may also have a supply and demand component.<sup>84</sup> For example, the steady trend towards increasing the quality of housing can be attributable to an increased demand for higher quality housing.<sup>85</sup> The

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72. *See id.*

73. *See id.*

74. *See supra* text accompanying note 13.

75. *See* BELSKY ET AL., *supra* note 16, at 45-46.

76. *See id.* at 45.

77. Peter D. Linneman & Isaac F. Megbolugbe, *Housing Affordability: Myth or Reality?*, 29 URB. STUD. 369, 371 (1992).

78. *See* BELSKY ET AL., *supra* note 16, at 45-46.

79. *See id.* at 45.

80. *Id.* (advocating for a measure of affordability that takes into account the quality of housing based on cost and the implicit non-monetary "costs" associated with housing choices).

81. *See id.* at 48.

82. *See id.*

83. *Id.*

84. *See id.*

85. *See id.*

increased improvements in the quality of housing can also cause an expected appreciation of housing not accounted for by the thirty percent rule.<sup>86</sup>

In addition, the thirty percent rule fails to differentiate between choice and necessity.<sup>87</sup> For all households, the ultimate goal for housing choice is to maximize budget utility.<sup>88</sup> What constitutes a maximization of budget utility, however, will vary across households depending on preference.<sup>89</sup> For instance, some households may choose to live in more expensive housing despite their ability to afford cheaper housing whereas other households may be forced to live in high-cost housing out of necessity due to a dearth of suitable, lower-cost housing.<sup>90</sup> The idea of choosing housing out of necessity because of a lack of minimally suitable housing is not captured in the thirty percent rule.<sup>91</sup> This is largely due in part to the lack of consensus regarding what constitutes minimally suitable housing and how it can differ based on societal norms.<sup>92</sup>

An additional criticism of the thirty percent rule examines the purposes for which the rule was initially enacted and how those purposes are inconsistent with the realities of housing affordability.<sup>93</sup> The impetus and implementation of the thirty percent rule were predominantly political in nature.<sup>94</sup> After all, establishing a national affordable housing policy is itself a political act.<sup>95</sup> Congress, due to budgetary considerations, had to determine how much individuals receiving federal housing subsidies ought to pay towards housing costs.<sup>96</sup> Despite arriving at the thirty percent rule, the debate surrounding the rule lacked a focus on “how much is too much to spend on housing and by whom.”<sup>97</sup> Perhaps the politicization of affordable housing contributed to the overly simplistic nature of the thirty percent rule.<sup>98</sup>

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86. See Linneman & Megbolugbe, *supra* note 77, at 371.

87. See BELSKY ET AL., *supra* note 16, at 47.

88. *See id.*

89. *Id.*

90. *See id.*

91. *See id.*

92. *See id.*

93. *See id.* at 49.

94. *See generally id.* at 49.

95. *See id.*

96. *See id.*

97. *Id.*

98. *See generally id.*

The use of the thirty percent rule also affects public spending and targeting.<sup>99</sup> Because the over simplicity of the rule tends to obscure nuances in housing policy, utilizing the rule to determine which households qualify may not be wholly accurate.<sup>100</sup> As a result, programs that utilize the thirty percent rule to allocate funding may inadvertently target higher income households rather than the households with the most severe forms of housing affordability.<sup>101</sup> The thirty percent rule's inability to meet the needs of the most severely cost-burdened households is compounded further as funding for federal housing programs continuously decreases.<sup>102</sup> As funding decreases, the severely cost-burdened become even more vulnerable due to a lack of accurate targeting under the thirty percent rule regime.<sup>103</sup>

A critique that this Article makes of the thirty percent rule is that the rule encourages the “protected affordable housing” and “unprotected affordable housing” dichotomy. The division gives a false representation of progress made with respect to affordable housing because only protected affordable housing benefits from developments under the FHA. These developments, discussed later in this Article, notably include placement in higher-income areas. Furthermore, the significance of the cost of living variable issues set forth by Jewkes and Delgadillo is underscored by differences in public education quality.<sup>104</sup> These differences are largely dependent upon whether a residence is in a low-income or high-income neighborhood, which is one of the characteristics that distinguish protected affordable housing from unprotected affordable housing.

As of 2001, eighty-five percent of persons below the poverty line, or 11.7 million people, spent more than thirty percent of their income on housing, while two-thirds of this same population spent over fifty percent of their income on housing.<sup>105</sup> Extremely Low Income (“ELI”) is defined as family income, which does not exceed the higher of either the federal poverty level or the average income for the area in question.<sup>106</sup> The “federal poverty level” guidelines are issued each year by the United States

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99. See William O'Dell et al., *Weaknesses in Current Measures of Housing Needs*, 31 HOUSING & SOC'Y 29, 34 (2004).

100. *Id.* at 32.

101. *Id.* at 34.

102. *Id.*

103. See *id.*

104. See generally Jewkes & Delgadillo, *supra* note 31, at 46 (discussing the cost of living variable).

105. Joel Norwood, *Trading Affordable Housing Obligations: Selling a Civic Duty or Buying Efficient Development?*, 39 CONN. L. REV. 347, 349 (2006).

106. See generally O'Dell et al., *supra* note 99, at 34.

Department of Health and Human Services.<sup>107</sup> The poverty level for a family of four in 2016 was \$24,300.<sup>108</sup> Roughly a quarter of all renters in the United States have an income of less than \$15,000.<sup>109</sup> To meet the affordability standard, these renters must find housing at a cost of \$375 or less per month.<sup>110</sup> As of 2016, there were 10.4 million ELI renters in the United States.<sup>111</sup> In every state, at least fifty-five percent of ELI renters spend more than half of their income on housing.<sup>112</sup> In fact, a significant number of ELI renters who lack resources for affordable housing units available can be attributed to just five states.<sup>113</sup> Florida and Georgia comprise over half the list with three counties from each state.<sup>114</sup> The smallest affordable housing gap in the United States occurs, overwhelmingly, in Massachusetts, with five Massachusetts counties making the list of the ten counties with the smallest gap between the number of affordable housing units and ELI renters.<sup>115</sup> The Great Recession created a larger gap in affordable housing when many homeowners lost their homes and were forced to become renters, particularly in metropolitan areas.<sup>116</sup> While rental homes can be found in every neighborhood, studies have shown that forty-five percent of occupied rental homes in metropolitan areas are located in low-income areas.<sup>117</sup> In 2011, the number of low-income renters reached 8.5 million, a 2.6 million increase from 2007.<sup>118</sup> In 2014, the national Fair Market Rent (“FMR”) for a two-bedroom apartment exceeded what ELI renters could feasibly afford

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107. See *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://aspe.hhs.gov/poverty-guidelines> [<https://perma.cc/3CZ3-NKTH>].

108. *Prior HHS Poverty Guidelines and Federal Register References*, U.S. DEP’T OF HEALTH & HUM. SERVS., <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> [<https://perma.cc/9MFR-3Y9B>].

109. JOINT CTR. FOR HOUSING STUD. OF HARV. UNIV., *AMERICA’S RENTAL HOUSING: EVOLVING MARKETS AND NEEDS 3* (2013), [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs\\_americas\\_rental\\_housing\\_2013\\_1\\_0.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_americas_rental_housing_2013_1_0.pdf) [<https://perma.cc/R7DR-NLUF>].

110. *Id.* at 6.

111. *NLIHC’s Analysis of the Middle Income Housing Tax Credit Bill*, NAT’L LOW INCOME HOUSING COAL. (Oct. 3, 2016), <http://nlihc.org/article/nlihc-s-analysis-middle-income-housing-tax-credit-bill> [<https://perma.cc/4CCS-LTQZ>].

112. See NAT’L LOW INCOME HOUSING COAL., *supra* note 1, at 2.

113. See Graham MacDonald & Erika C. Poethig, *We’ve Mapped America’s Rental Housing Crisis*, URB. INST. (Mar. 3, 2014), <http://www.urban.org/urban-wire/weve-mapped-americas-rental-housing-crisis> [<https://perma.cc/Z6AY-ZG5D>].

114. The other three states on the list are Texas, Nevada, and Arizona. *See id.*

115. *See id.*

116. See Anastasia Kalugina, *Affordable Housing Policies: An Overview*, 14 CORNELL REAL EST. REV. 76, 80 (2016).

117. See JOINT CTR. FOR HOUSING STUD. OF HARV. UNIV., *supra* note 109, at 4 (citing a study by American Community Survey using data collected from 2007 to 2011).

118. *See id.* at 7.

by almost double.<sup>119</sup> There is generally only enough affordable housing to accommodate about thirty percent of the country's ELI renters.<sup>120</sup> Notably, Section 8<sup>121</sup> units make up thirty-three percent of all available rental housing in the United States.<sup>122</sup> As the Section 8 contracts expire in the coming years, these units could be converted back to FMR, further exacerbating the lack of affordable housing.<sup>123</sup> Without federal subsidies, such as Section 8, the Urban Institute estimates there would be only one affordable rental unit for every one hundred ELI renters.<sup>124</sup>

The widely accepted affordable housing formula has unacknowledged detrimental effects on unprotected affordable housing. First, the location of affordable housing for low-income individuals varies in terms of neighborhood quality depending upon whether or not the housing is protected or unprotected. Also, there are cyclical effects of the dilapidated characteristics that can often define affordable housing—particularly such housing that is unprotected. Families left with no choice but to inhabit substandard housing in neighborhoods with high poverty concentration often spend far more than thirty percent of their income on housing, in excess of HUD's affordability guideline.<sup>125</sup> Defining thirty percent of one's income level as affordable supports the practice of placing affordable housing in low-income neighborhoods in an effort to comply with this formula. It is also important to note that low-income children who live in protected housing have half the prevalence of high blood lead levels of low-income children who live in unprotected housing have.<sup>126</sup>

In 2016, the poverty level in the United States for a family of four was set at an annual income of \$24,300.<sup>127</sup> According to the HUD guidelines, a

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119. NAT'L LOW INCOME HOUSING COAL., OUT OF REACH 2014, at 4 (2014), <http://nlihc.org/sites/default/files/oor/2014OOR.pdf> [<https://perma.cc/6JMF-APW5>].

120. See JOINT CTR. FOR HOUSING STUD. OF HARV. UNIV., *supra* note 109 at 6; see also NAT'L LOW INCOME HOUSING COAL., *supra* note 111.

121. Section 8 Program began in 1974, and is now called the Housing Choice Voucher Program. It is the federal government's program for providing housing assistance to low-income families. See *Housing Choice Vouchers Fact Sheet*, HUD.GOV, [https://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) [<https://perma.cc/9FWX-55HH>]; see also *Section 8 Program Background Information*, HUD.GOV, [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/rfp/s8bkinfo](https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rfp/s8bkinfo) [<https://perma.cc/7YQF-G9DR>].

122. IMMERGLUCK, CARPENTER & LUEDERS, *supra* note 3, at 20.

123. See *id.*

124. MacDonald & Poethig, *supra* note 113.

125. See Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22-2015 FAST FOCUS: INST. FOR RES. ON POVERTY 1, <http://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf> [<https://perma.cc/H3NY-Y234>].

126. Katherine A. Ahrens et al., *Housing Assistance and Blood Lead Levels: Children in the United States, 2005-2012*, 106 AM. J. PUB. HEALTH 2049, 2053-54 (2016).

127. U.S. DEP'T OF HEALTH & HUM. SERVS., *supra* note 108.



family of four living in poverty should spend no more than thirty percent of their income, here \$600, on rent and utilities each month. Since the average monthly rent of a modest one-bedroom apartment in the United States is \$850,<sup>128</sup> the type of structure that is less than approximately one-third of the fair market value of a home is likely to be located in a neighborhood defined by extreme poverty, with conditions that most would categorize as uninhabitable.<sup>129</sup>

Given this likelihood, the income-based measure of whether or not an individual or family is residing in a home that presents a minimal financial burden does not account for the detrimental effects of living in the neighborhoods where such housing is located. The economic definition of “affordable housing” fails to account for other forms of housing deprivation, including physical decency of the dwelling, overcrowding conditions, unsafe or undesirable locations, or insecure tenure. The current definition of housing affordability is a narrow concept. In contrast, housing deprivation is a broad term, which encompasses housing affordability. In order to determine true “affordability,” the analysis must take into account these other forms of housing deprivation. Low-income families are at a higher risk of involuntary moves,<sup>130</sup> which negatively affects educational outcomes.<sup>131</sup> The Thomasville study unearthed high rates of eviction located in low-income areas, many requiring that families vacate their residences within seven days.<sup>132</sup> Evictions can have a traumatic effect on families that experience them, the cost of which is not reflected in the affordable housing formula.<sup>133</sup>

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128. NAT’L LOW INCOME HOUSING COAL., *OUT OF REACH* 2016, at 2 (2016), [http://nlihc.org/sites/default/files/oor/OOR\\_2016.pdf](http://nlihc.org/sites/default/files/oor/OOR_2016.pdf) [<https://perma.cc/PT8K-MTU5>].

129. *Compare id.* at 6, with O’Dell et al., *supra* note 99, at 29.

130. *See generally* Stefanie DeLuca, Peter Rosenblatt & Holly Wood, *Why Poor People Move (and Where They Go): Residential Mobility, Selection and Stratification*, (2013) (unpublished fieldwork) (on file with NYU School of Law), [http://www.law.nyu.edu/sites/default/files/ECM\\_PRO\\_074751.pdf](http://www.law.nyu.edu/sites/default/files/ECM_PRO_074751.pdf) [<https://perma.cc/ADC4-5RCF>].

131. *See* John Hagan, Ross MacMillan & Blair Wheaton, *New Kid in Town: Social Capital and the Life Course Effects of Family Migration on Children*, 61 *AM. SOC. REV.* 368, 371 (1996).

132. *See Housing Instability*, *supra* note 2.

133. Desmond, *supra* note 125, at 4 (“Another study found that even after conditioning on a host of important factors, experiencing an eviction is associated with over a third of a standard deviation increase in neighborhood poverty and crime rates, relative to voluntary moves. Families involuntarily displaced from their homes often end up in worse neighborhoods. Tenants evicted through the court system carry the judgment on their record. Owing to open record laws, in many states this information is easily accessible and free online. An eviction judgment makes it difficult to secure decent housing in a safe neighborhood, as many landlords reject anyone with a recent eviction.”) (internal citations omitted).

The location of affordable housing is important to foster financial advancements and career opportunities. Many jobs are no longer in America's inner cities, where most affordable housing is located; the distance is therefore large between affordable housing communities and available employment.<sup>134</sup> Living a long distance from employment carries several negative implications. These are usually referred to as the "spatial mismatch hypothesis."<sup>135</sup> John Kain first proposed the spatial mismatch hypothesis in 1964, linking the long commute times for many low-income inner-city residents to the decrease in available employment and increase in poverty.<sup>136</sup> In addition to this strain on affordable housing residents, vacant job positions go unfilled because low- and moderate-income families cannot afford to live near the business or cannot afford the long commute.<sup>137</sup> A decrease in job-availability further contributes to the poverty-cycle and negatively impacts overall economic stimulation as well.<sup>138</sup>

The location of affordable housing not only has implications for financial and employment considerations, but also drastic ramifications for health, education, and overall life expectancy.<sup>139</sup> The location of affordable housing concentrates poverty in certain schools, which severely impacts children's education.<sup>140</sup> For example, poor students usually have greater needs, so the education cost per child is higher in poor areas than in affluent school districts.<sup>141</sup> High poverty school districts spend less per child than their counterparts with more resources.<sup>142</sup> Students of lower socioeconomic status may suffer from malnutrition, poor health, lack of parental involvement and stimulating home environments, frequent

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134. See Nicole Stelle Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 HARV. J. ON LEGIS. 173, 178 (2001).

135. Norwood, *supra* note 105, at 349.

136. See Garnett, *supra* note 134, at 179.

137. See Justin D. Cummins, *Housing Matters: Why Our Communities Must Have Affordable Housing*, 28 WM. MITCHELL L. REV. 197, 202 & n.21 (2001).

138. See generally *id.* at 202-14 (assessing certain economic impacts of the lack of sufficient affordable housing).

139. See James A. Long, *The Low-Income Housing Tax Credit in New Jersey: New Opportunities to Deconcentrate Poverty Through the Duty to Affirmatively Further Fair Housing*, 66 N.Y.U. ANN. SURV. AM. L. 75, 76 (2010). See generally Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 VAND. L. REV. 1747, 1760, 1800 (2005).

140. See James E. Ryan, *Schools, Race, And Money*, 109 YALE L.J. 249, 256-57 (1999).

141. See *id.*

142. See Press Release, *Secretary Duncan, Urban League President Morial to Spotlight States Where Education Funding Shortchanges Low-Income, Minority Students*, U.S. DEP'T OF EDUC. (Mar. 13, 2015), <https://www.ed.gov/news/media-advisories/secretary-duncan-urban-league-president-morial-spotlight-states-where-education-funding-shortchanges-low-income-minority-students> [<https://perma.cc/QL2P-Q62S>].

changes in residence, and contact with violence and drug use.<sup>143</sup> Thus, “[m]any poor children start school with an approximately two-year disadvantage compared to many suburban youngsters.”<sup>144</sup>

Concentrating affordable housing in poor communities with already low-performing schools perpetuates the poverty cycle.<sup>145</sup> There is a strong correlation between socioeconomic status and academic performance where at least two-thirds of the students at schools located in poor neighborhoods do not perform at a basic level on national tests.<sup>146</sup> “Children who grow up in predominately poor neighborhoods and attend very low income schools face many barriers to academic and occupational achievement, even if they themselves are not poor.”<sup>147</sup> Thus, regardless of the families’ individual income, attending poor-performing schools drastically impacts the young residents’ chances of success. Furthermore, dropout rates exceed the national average of eleven percent in large, central-city schools.<sup>148</sup> This is partially caused by the location of the school not attracting the best teachers and administrators because “all else being equal, teachers and administrators tend to choose schools that have pleasant and supportive environments.”<sup>149</sup> Salaries in suburban schools are often at least equal to, and sometimes exceed, the salaries in urban schools.<sup>150</sup>

The vicious cycle of unavailable affordable housing continues with horrific substandard conditions in which residents typically live. Substandard conditions include the presence of cockroaches, rodents, mold, poor air quality, and a lack of running water.<sup>151</sup> “[A]side from the obvious material discomforts of living in substandard conditions,” living in poverty considerably affects overall health.<sup>152</sup> For example, rates of “tuberculosis, AIDS, lead paint poisoning, and asthma” are “unacceptably” high in some of the poorest communities in America.<sup>153</sup> Environmental hazards, which are commonly found in low-income housing communities, are the main

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143. Ryan, *supra* note 140, at 285.

144. *Id.*

145. See Orfield, *supra* note 139, at 1759-61.

146. Ryan, *supra* note 140, at 274.

147. Orfield, *supra* note 139, at 1760.

148. Ryan, *supra* note 141, at 274.

149. *Id.* at 294.

150. *Id.*

151. Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 293, 296 (2015).

152. Long, *supra* note 139, at 95.

153. *Id.*

causes of poor health.<sup>154</sup> Poor health typically results from exposure to old, inadequate housing units.<sup>155</sup> Some of the serious health concerns that low-income populations face, in part from their housing, include “asthma, respiratory infections, lead poisoning, learning disabilities, behavioral and mental problems, injuries, long-term brain damage, cancer, and other harmful conditions.”<sup>156</sup> Although jurisdictions must abide by local housing codes, the enforcement of such codes is reportedly less favorable to tenants.<sup>157</sup> It is important to note that there are federal regulations that cover those living in unprotected housing. For example, private landlords renting unprotected affordable housing must disclose the presence of lead paint and must also comply with anti-discrimination laws.<sup>158</sup>

The proliferation of segregated housing, resulting in minorities and low-income individuals living in isolation, continues. For example, in 2000, “people of color comprise[d] 68 percent of public housing residents and 58 percent of Section 8 voucher and certificate users, although they represent[ed] only 23 percent of the total population.”<sup>159</sup> Segregation leads to a high poverty concentration among minorities, which has adverse economic outcomes.<sup>160</sup>

A house located in a low-income area may be an affordable dwelling, but the current standards for measuring affordability fail to account for the overlap between cheap housing and neighborhood stressors, which are in and of themselves “costs.”<sup>161</sup> In addition to income that must be spent combating such stressors, the constraints that these stressors place on potential income and upward mobility create lost opportunities to generate

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154. See Benfer, *supra* note 151, at 293.

155. See *id.* at 292.

156. See *id.* at 293.

157. DAN IMMERGLUCK, THE ROLE OF INVESTORS IN THE SINGLE-FAMILY MARKET IN DISTRESSED NEIGHBORHOODS: THE CASE OF ATLANTA vi (Joint Ctr. for Housing Stud. of Harv. Univ. ed., 2013) (“No [Atlanta property investors] complained about excessive code enforcement. In fact, several private investors complained that lax code enforcement was a major problem and a barrier to responsible property investment. More than one had an anecdote about an open or dangerous property near one of its properties and the difficulties they faced in trying to get the City of Atlanta to address their concerns in a meaningful way. Some respondents commented that investors did not always renovate up to code or pull the required permits, but, as might be expected, none admitted to such practices themselves.”).

158. GA. DEP’T OF CMTY. AFF., GEORGIA LANDLORD TENANT HANDBOOK: FREQUENTLY ASKED QUESTIONS 6 (2012), [http://www.dca.ga.gov/housing/housingdevelopment/programs/downloads/Georgia\\_Landlord\\_Tenant\\_Handbook.pdf](http://www.dca.ga.gov/housing/housingdevelopment/programs/downloads/Georgia_Landlord_Tenant_Handbook.pdf) [<https://perma.cc/6GYC-G3F4>].

159. John A. Powell, *Opportunity-Based Housing*, 12 J. AFFORDABLE HOUSING & CMTY DEV. L. 188, 193 (2002).

160. See John F. Kain, *Racial and Economic Segregation in US Metropolitan Areas*, in THE OXFORD HANDBOOK OF ECONOMIC GEOGRAPHY 518-34 (Gordon L. Clark et al. eds., 2000).

161. See generally STONE ET AL., *supra* note 8.

wealth. The additional costs of housing created by stressors such as safety and health issues which decrease quality of life have been studied, but the question of what compounding negative effects these costs have on unprotected affordable housing hangs heavy and remains unanswered.<sup>162</sup> Michael Stone advocates for the “shelter poverty standard” to determine affordable housing.<sup>163</sup> This standard looks at the gap between what is left over after housing costs are paid and whether this number meets the basic minimum cost standard for “nonshelter needs.”<sup>164</sup> If a household is unable to meet their nonshelter needs, then their housing is not “affordable.”<sup>165</sup> The shelter poverty standard takes into account household size, income, and the cost of nonshelter basics, as opposed to just a fixed percentage of income.<sup>166</sup> Tim Iglesias’ critique of the traditional affordable housing formula discusses the “two person per bedroom” standard and how the application of this standard is especially discriminatory for minorities when family size tends to be larger than the typical white family.<sup>167</sup>

Respected academics also differentiate between market affordability and individual affordability by recommending that housing practitioners use the residual income approach for the affordable housing calculation. This takes into account household size, location, transportation, and non-housing related expenses.<sup>168</sup> Critiques of conventional measures of housing affordability have also discussed the inability of conventional affordable housing measures to control for changes in quality of housing over time, account for the actual financial constraints of homebuyers, or control for the impacts of expected appreciation on housing cost increases.<sup>169</sup>

In addition to the examination of these stressors by academics, government regulation has recognized the impact that living in low-income areas has on health, employment, and education, most notably in its rule to Affirmatively Further Fair Housing (“AFFH Rule”).<sup>170</sup> The adverse

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162. See generally POLLACK ET AL., *supra* note 10; Kevin C. Foy, *Home Is Where the Health Is: The Convergence of Environmental Justice, Affordable Housing, and Green Building*, 30 PACE ENVTL. L. REV. 1, 1-3 (2012).

163. See Michael E. Stone, *Housing Affordability: One-Third of a Nation Shelter-Poor*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 44-45 (Rachel G. Bratt et al. eds., 2006).

164. *Id.* at 44.

165. See *id.* at 44-45.

166. *Id.* at 45.

167. See Tim Iglesias, *Moving Beyond Two-Person-Per-Bedroom: Revitalizing Application of the Federal Fair Housing Act to Private Residential Occupancy Standards*, 28 GA. ST. U. L. REV. 619, 632-35 (2012).

168. Jewkes & Delgadillo, *supra* note 31, at 43-48.

169. See Linneman & Megbolugbe, *supra* note 77, at 371.

170. See Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91-92, 570, 574, 576, & 903).

consequences of sitting affordable housing in low-income neighborhoods have also received greater attention by the Supreme Court and housing agencies. Both have attempted to implement policies that mandate more economically diverse neighborhoods, as further described in Part II. Yet, the Court's decisions and HUD rules apply only to protected affordable housing. The Supreme Court and HUD have also addressed the segregative effects of affordable housing in recent years; they have set forth ongoing tests and measures to hold certain individuals and entities accountable for creating the truly integrated living patterns promised by the FHA.<sup>171</sup> However, while the FHA applies to private entities, and is thus applicable to unprotected affordable housing, the government's attempts to mandate the placement of affordable housing in healthy and thriving communities apply only to protected affordable housing.

Affordable housing is difficult to create and maintain, and this is reflected in the thirty percent barometer used to assess affordability. Despite the simplicity of this rule of thumb, it fails to consider elements such as transportation and other non-shelter needs that are intrinsically linked to housing, yet remain outside of the formula. The thirty percent rule of thumb is static. Therefore, no matter what the percentage, it is relative to the total household income and applies to all, from extremely low-income individuals to those who are very wealthy. This fails to consider the difference in dollar amounts that actually go towards housing, and all other expenses, among households of these different income levels. The formula not only fails to address the differences between various income levels, but also deepens the divide between low-income individuals who reside in protected housing and those who reside in unprotected housing. When an individual spends thirty percent of her income on protected housing, that individual also enjoys the quality of life initiatives resulting from the AFFH Rule and the housing law created by *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*. Unprotected housing dwellers, on the other hand, do not receive these same benefits.

## **II. FAIRER HOUSING: CALL TO ACTION TO DECREASE SEGREGATION AND INCREASE HEALTHY COMMUNITIES**

In recent years, housing policies and laws have recognized the importance of creating affordable housing that is situated in neighborhoods with amenities that increase the quality of life of the inhabitants. This progression sharply contrasts with the dated thirty percent rule of thumb. Part II of this Article highlights efforts to address the concentration of

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171. *See, e.g.,* Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 2525-26 (2015).

affordable housing for low-income people in poor, minority communities, while noting that the beneficiaries of such efforts are primarily those who live in protected housing. The discriminatory effects of locating all affordable housing within already poor communities were recognized in the recent United States Supreme Court case, *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, in which the allocation of tax credits through the Low-Income Housing Tax Credit (“LIHTC”) program resulted in a disparate impact for minorities.<sup>172</sup> The LIHTC has created close to three million units of affordable housing, and is the largest source of affordable housing in the United States.<sup>173</sup> Since the creation of the program in 1986, the LIHTC has provided tax credits to entities wishing to create or rehabilitate affordable housing.<sup>174</sup> Although the LIHTC provides tax credits to developers to increase housing for low-income families, placing all of the affordable housing in areas with already high poverty rates undermines the purpose of the program and furthers socioeconomic segregation.<sup>175</sup> Interestingly, the Supreme Court held segregation is not perpetuated if developers, in deciding where to locate the new housing, use a multi-factor test.<sup>176</sup> The Court stated the multi-factor test is necessary to avoid preventing the goal of urban renewal.<sup>177</sup> Unfortunately, this limitation may make it difficult to establish causation in disparate impact claims if the developer is able to simply point to minor independent factors that influenced their location decision rather than a general policy.<sup>178</sup> Despite its limitations, the *Inclusive Communities* holding created a rule permitting plaintiffs to seek retribution when government-housing policies have a disparate impact on a protected class, even in cases when there is no evidence of intentional discrimination.<sup>179</sup>

In 2015, HUD issued the AFFH Rule as a supplement to the FHA.<sup>180</sup> The FHA provides that it is “the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States” by prohibiting “discrimination in the sale, rental, and financing of dwellings.”<sup>181</sup> HUD had directed certain programs, aimed at affirmatively

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172. *See id.* at 2522.

173. *Low-Income Housing Tax Credits*, HUD USER (May 15, 2016), <https://www.huduser.gov/portal/datasets/lihtc.html> [<https://perma.cc/3LYV-PMXU>].

174. *Id.*

175. *See generally Inclusive Communities*, 135 S. Ct. at 2522.

176. *See id.* at 2523.

177. *See id.*

178. *Id.* at 2523-24.

179. *See id.* at 2518.

180. *See generally* Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91-92, 570, 574, 576, & 903).

181. *Id.* (citing the Fair Housing Act of 1968, 42 U.S.C. 3601-3619).

furthering fair housing, to undertake a case-by-case analysis of community impediments.<sup>182</sup> The AFFH Rule instructs program participants to identify these “impediments” as anything in their jurisdiction that restricts accessibility to fair housing choice, but this identification and analysis was generally not submitted or reviewed by HUD itself.<sup>183</sup> The programs, therefore, created many unforeseen side effects on communities, despite the good intentions of the FHA.<sup>184</sup> These disparate impacts gave rise to the new AFFH initiative and eventual rule.<sup>185</sup>

The AFFH Rule attempts to reduce racially and ethnically concentrated areas of poverty. It establishes that the government’s “race-neutral approach” in its allocation of the LIHTC is not a sufficient rationalization for government policies, and instead provides for a balancing test approach to fair housing.<sup>186</sup> The AFFH Rule requires HUD to provide more data to communities looking to expand equal housing choices.<sup>187</sup> The AFFH Rule suggests a new system of analyzing neighborhood stressors and assets to help local governments actually increase the availability of fair housing choices. Limited access to high-quality educational opportunities, limited access to stable employment, capital disinvestment, and high levels of unemployment are all examples of stressors impacting the equal access of fair housing opportunities.<sup>188</sup> Finally, under the AFFH Rule, HUD will provide customized assessment tools to “local jurisdictions, public housing authorities (PHAs), and states and Insular Areas.”<sup>189</sup>

There are criticisms of the AFFH Rule. Due to its infancy, its effectiveness has not been tested. The onus to review and opine on the increased data required under the AFFH Rule is on HUD, which some fear may overwhelm the organization. Despite its shortcomings, the AFFH Rule does provide more teeth to the arguably dormant affirmatively furthering clause of the FHA,<sup>190</sup> and will assist with providing the data necessary for plaintiffs making a disparate claim under the FHA to

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182. *Id.*

183. *Id.*

184. *See id.* at 42,273.

185. *See id.*

186. *HUD Rule on Affirmatively Furthering Fair Housing*, HUD USER, [https://www.huduser.gov/portal/sites/default/files/pdf/AFFH\\_Final\\_Rule\\_Executive\\_Summary.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/AFFH_Final_Rule_Executive_Summary.pdf) [<https://perma.cc/RD3Z-633K>].

187. *See id.*

188. *See* Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43,714 (July 19, 2013) (to be codified at 24 C.F.R. 5, 91, 92, 570, 574, 576 & 903).

189. HUD USER, *supra* note 186.

190. *See Preliminary Overview of Final Affirmatively Furthering Fair Housing Rule*, NAT’L LOW INCOME HOUSING COAL. (July 13, 2015), [http://nlihc.org/sites/default/files/Preliminary-Overview\\_Final-AFFH-Rule.pdf](http://nlihc.org/sites/default/files/Preliminary-Overview_Final-AFFH-Rule.pdf) [<https://perma.cc/XUJ3-QBDJ>].



successfully make a prima facie case.<sup>191</sup> Those living in unprotected affordable housing are tenants with private landlords, and because these landlords are not recipients of HUD funds, they are neither subject to the affirmatively furthering clause of the FHA nor the AFFH Rule. The AFFH Rule strongly emphasizes the importance of neighborhood assets on housing policy. One such asset is education. Focusing on a specific school district in an impoverished neighborhood will illustrate how the concentration of housing for low-income families in these neighborhoods adversely affects the educational attainment and, ultimately, the opportunity for poor children to break the cycle of poverty as adults.

### III. EDUCATION AND AFFORDABLE HOUSING: THE THOMASVILLE STUDY

Thomasville Heights Elementary School is part of the Atlanta City school district in Fulton County.<sup>192</sup> It serves, on average, 594 students in grades kindergarten through fifth grade, and ninety-nine percent of those students are African American.<sup>193</sup> Over the last three consecutive years, the school has received an “F” rating on the Georgia College and Career Ready Performance Index report card.<sup>194</sup>

According to the school’s website, almost ninety percent of the enrolled students satisfy federal standards to qualify for subsidized lunches as part of the school’s free and reduced lunch program.<sup>195</sup> Approval for subsidized lunches is based on household size and total household pre-tax income, which includes sources of income like wages, social security, pension, unemployment, welfare, and child support.<sup>196</sup> The demographic and socio-economic make-up of the school’s families largely matches that of the population in the surrounding community. Fifty-three percent of the community’s residents are classified as living in poverty, and thirty percent are unemployed.<sup>197</sup> Furthermore, almost eighty percent of the Thomasville area is African American, while only about ten percent is Caucasian.<sup>198</sup>

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191. See generally Courtney Lauren Anderson, *Integrate and Reactivate the 1968 Fair Housing Mandate*, 13 HASTINGS RACE & POVERTY L.J. 1, 1-60 (2016).

192. *General Information About Our School*, THOMASVILLE HEIGHTS ELEMENTARY SCH., <http://www.atlanta.k12.ga.us/domain/1229> [<https://perma.cc/8MGY-2BKZ>].

193. *Id.*

194. Molly Bloom, *Half of Teachers Absent at APS School Up for New Management*, ATL. J. CONST. (Jan. 29, 2016), <http://www.myajc.com/news/news/local-education/half-of-teachers-absent-at-aps-school-up-for-new-m/nqFw9/> [<https://perma.cc/E4B3-MQZH>].

195. THOMASVILLE HEIGHTS ELEMENTARY SCH., *supra* note 192.

196. *Meal Applications*, ATLANTA PUB. SCH., <http://atlantapublicschoolsnutrition.us/?page=lunchapps> [<https://perma.cc/65MG-4ZSY>].

197. *Housing Instability*, *supra* note 2, at 18.

198. *Id.*

Thomasville Heights is also notorious for sharing the same zip code as the local Atlanta United States Penitentiary (“Atlanta USP”).<sup>199</sup> The Federal Bureau of Prisons operates its institutions at five security levels, ranging from minimum-security institutions to administrative facilities.<sup>200</sup> The Atlanta USP located in Thomasville Heights is one of Georgia’s two medium level security prisons, the highest security level of the federal penitentiaries located in the state.<sup>201</sup> Medium security facilities “have strengthened perimeters (often double fences with electronic detection systems), mostly cell-type housing,” a higher staff-to-inmate ratio, and greater internal controls than lower security facilities.<sup>202</sup> As such, the location of the Atlanta USP and its image in the surrounding communities has done little to prevent Thomasville Heights from experiencing the impacts of low-income housing development, bleak economic prospects, and concentrated poverty.<sup>203</sup>

In an attempt to find a connection between housing instability and poor housing conditions and enrollment turnover and educational performance,<sup>204</sup> the Atlanta Volunteer Lawyers Foundation (“AVLF”), the Federal Reserve Bank of Atlanta, and Georgia State University’s Sociology Department, Creative Media Industries Institute, and College of Law conducted a study of Thomasville Heights Elementary School.<sup>205</sup> The 2016 study highlighted high turnover rates in the school district and suggested that the impact of low-income housing projects in the area negatively contributed to the school’s condition.<sup>206</sup> Using various data sources,<sup>207</sup> the study found that the forty percent year-to-year turnover rates

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199. *See generally USP Atlanta*, FED. BUREAU PRISONS, <https://www.bop.gov/locations/institutions/atl/> [<https://perma.cc/9365-SS7H>].

200. *About Our Facilities*, FED. BUREAU PRISONS, [https://www.bop.gov/about/facilities/federal\\_prisons.jsp](https://www.bop.gov/about/facilities/federal_prisons.jsp) [<https://perma.cc/2ZZK-QGHR>] (“Facilities are designated as either minimum, low, medium, high, or administrative . . . Security levels are based on such features as the presence of external patrols, towers, security barriers, or detection devices; the type of housing within the institution; internal security features; and the staff-to-inmate ratio.”).

201. *See Our Locations*, FED. BUREAU PRISONS, <https://www.bop.gov/locations/list.jsp> [<https://perma.cc/GJ7L-K6FL>].

202. FED. BUREAU PRISONS, *supra* note 200.

203. *See generally* AMY WIDESTROM, *DISPLACING DEMOCRACY: ECONOMIC SEGREGATION IN AMERICA* 67-75 (Univ. of Pa. Press, 2015).

204. *Housing Instability*, *supra* note 2, at 7.

205. *Id.* at 6.

206. *See id.* at 23.

207. The following data sources were used in the Thomasville Heights study: Fulton County 2015 dispossession records; AVLF 2015 housing cases; Atlanta Legal Aid Society 2015 housing cases; code enforcement records with dispositions; poverty and other census tract data; rental versus owner-occupied rates; and an analysis of ownership of rental properties. *Id.* at 9.

in Thomasville Heights' school enrollment was largely affected by housing conditions and housing status.<sup>208</sup> More specifically, family displacements resulting from intolerable housing conditions,<sup>209</sup> and high rates of evictions in the Thomasville area<sup>210</sup> have impacted the school's enrollment.<sup>211</sup>

The connection between the housing conditions of low-income neighborhoods and school performance is an area of public policy that begs further research and attention.<sup>212</sup> Existing studies have shown, however, the effects that schools have on their community, and vice versa.<sup>213</sup> For example, school performance declines as the school has more low-income students, and that "within a generation, the neighborhood follows."<sup>214</sup> These progressively low-income neighborhoods often have "nearly twice the number of poor children as regional averages," and these children and their families are living in communities "characterized by older housing" options, "slow growth," and fewer opportunities for meaningful employment.<sup>215</sup> Areas of concentrated poverty, such as those in the Thomasville Heights area, often also have above average crime rates.<sup>216</sup> The described stressors on the community have major limiting effects within the schools themselves which in turn perpetuate the effects that poorly performing schools have on their surrounding community.<sup>217</sup> Ultimately, researchers may recognize these schools by their high student turnover rates, and they will find that the poor housing conditions of the community may be the source of the problem.<sup>218</sup>

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208. *See generally id.* at 9.

209. According the City of Atlanta code complaints, housing conditions ranged from infestations of rodents, snakes, or insects, to structural damage and dilapidated structures. *See generally Code Enforcement Section*, CITY OF ATLANTA, <http://www.atlantaga.gov/index.aspx?page=328> [https://perma.cc/ZU9V-X4DT]. Numerous code complaints also described abandoned vehicles, holes in roofs, electrical wiring exposure, and overgrown lots. *See generally id.*

210. The study suggests that illegal evictions, evictions that do not follow proper eviction proceedings, may be the source of the high rate of evictions in the Thomasville area. *See id.* at 5. For more information on eviction procedures, see *Evictions*, FULTONCOUNTYGA.GOV, <http://www.fultoncountyga.gov/fcmd-divisions/fcmd-evictions> [https://perma.cc/8385-47YE], and GA. DEP'T OF CMTY. AFF., *supra* note 158, at 58-59.

211. *Housing Instability*, *supra* note 2, at 5.

212. *See* Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825, 860 (1995) (noting that urban policy decisions often "rely overwhelmingly on census data" and public school data is often ignored).

213. Orfield, *supra* note 139, at 1758 (describing how racial change in education "previews social change in the housing market").

214. *Id.*

215. *Id.* at 1759-60.

216. *Id.* at 1761.

217. *See id.*

218. *See* Henry M. Levin, *On the Relationship Between Poverty and Curriculum*, 85 N.C. L. REV. 1381, 1394-95 (2007) (describing the connection between low-income students and

Using Thomasville Heights as an example, it is easy to see the advantage of the new assessment tool set forth in the AFFH Rule.<sup>219</sup> The identification of neighborhood assets and stressors highlights some of the very issues that this community has been facing. For example, poverty lines, unemployment rates, and low educational achievement are strong stressors affecting the socio-economic prospects of the community's residents. The location of the federal penitentiary down the street from the elementary school also stresses the community and likely impacts crime rates, safety, and the psychological outlook of the residents. As an asset, the penitentiary may also help keep property costs low in the area.

Another stressor for Thomasville Heights is the revitalization of nearby communities, because the gentrification of those areas is likely displacing low-income residents and funneling them into poorer areas like Thomasville.<sup>220</sup> While revitalization increases property values and may help with crime rates in those targeted areas, the stress it causes on low-income neighborhoods exacerbates the disparate impact. Under the AFFH Rule, these stressors and assets will be analyzed and considered, but the real effect the Rule's balancing tool will have on policy change remains to be seen. Nevertheless, the tool does directly address and require an analysis of socioeconomic determinants on certain categories of affordable housing.

#### IV. LEAVING BEHIND UNPROTECTED AFFORDABLE HOUSING

The Supreme Court's *Inclusive Communities* decision increases the scrutiny of concentrating low-income housing in areas like the Thomasville Heights school district.<sup>221</sup> It is important to note that the subject of this landmark case is protected housing, as development was funded in part by the LIHTC. As housing policies align with the majority opinion, low-income families able to reside in protected affordable housing will benefit from this decision. However, as stated previously, the supply of affordable housing does not meet the demand. Therefore, households in unprotected housing that are thirty percent or less of their income will be deemed to be living in affordable housing, and the quality of life disparity when compared to their protected housing counterparts will persist. Several government programs in the last decade have sought to be more inclusive,

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student turnover rates in local schools); *see also* Ann M. Piccard, *Residential Evictions in Florida: When the Rent Is Due, Where Is the Process?*, 36 STETSON L. REV. 149, 165 & n.94 (2006) (noting the effects of poor housing conditions on children's lives, and illustrating that one long term effect is that such housing conditions cause high turnover rates in schools).

219. *See generally* *Housing Instability*, *supra* note 2, at 20.

220. *See generally* *id.*

221. *See generally* *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2551 (2015).

and the result has been the simultaneous benefit of both low-income housing and education options available in the same neighborhood. The shift towards collaboration stemmed from government programs such as Choice Neighborhood Initiatives and HOPE IV, which incentivizes and supports protected affordable housing.<sup>222</sup>

The AFFH Rule provided guidance, as well as a tool set, for defining and measuring compliance with the affirmatively furthering fair housing clause of the FHA by a HUD-funded recipient.<sup>223</sup> The *Inclusive Communities* decision holds defendants accountable if their policy or practice perpetuates segregation.<sup>224</sup> Unfortunately, it is much more difficult for the discriminatory actions of private landlords, renting unprotected affordable housing, to trigger any of the tenant protections outlined in this law and policy. The *Inclusive Communities* case already imposes a substantial barrier to the plaintiff seeking relief for a disparate impact claim. This high bar makes it extremely unlikely that the Court will hold private landlords who receive no government funding liable for creating segregated neighborhoods. Further, the Court explicitly stated they would be loath to find an instance of a single transaction cognizable as a disparate impact under the FHA.<sup>225</sup>

This Article asserts that as a community asset, education adds value to a household when attained, and is a household cost, albeit difficult to exactly quantify, when denied. Those critical of the thirty percent affordable housing formula concede that there are costs that are not reflected in this simple equation, but the opportunity cost lost due to education has not been comprehensively explored. Further, the uncertainty of this amount creates a challenge to simply reducing the calculation to a static formula. For the adverse effects that housing has on education to be captured by the government, it must first be noted that a large population of students live in housing outside of the protections of progressive affordable housing policies. Once the existence of unprotected affordable housing is recognized, the relationship between this specific type of housing and educational attainment must be examined in order to understand the additional obstacles children in these housing units face. Otherwise, when

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222. See generally MARTIN D. ABRAVANEL ET AL., LINKING PUBLIC HOUSING REVITALIZATION TO NEIGHBORHOOD SCHOOL IMPROVEMENT 1-43 (Urb. Inst. ed. 2006), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411462-Linking-Public-Housing-Revitalization-to-Neighborhood-School-Improvement.PDF> [<https://perma.cc/JG2C-GWBZ>].

223. See generally Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91-92, 570, 574, 576, & 903).

224. See *Inclusive Communities*, 135 S.Ct. at 2525.

225. See *id.* at 2524.

policies are put into place, they will only benefit tenants of protected affordable housing.

The impetus for creating fair housing rules and policies with “more teeth” stems from federal mandates, but significantly impacts the operation and obligations of state and federal agencies.<sup>226</sup> The same holds true for laws and regulations that create significant affordable housing procedures. As the neighborhood becomes more attractive, the neighborhood begins to gentrify. Residents living in protected affordable housing, especially LIHTC units, will enjoy a certain measure of stability, as their housing units must remain affordable for a number of years, and increases in rent are restricted. However, residents in unprotected affordable housing have no such guaranty. They will be displaced and forced to relocate. As discussed above, this mobility cost is not reflected in the affordable housing formula. These unintended consequences cannot be avoided if they are not studied. If the purpose of adhering to a formula is to determine what a family can afford, consideration for the foregone education opportunities should, at a minimum, be contemplated. This will have the effect of connecting residents of unprotected affordable housing with the same resources available to those living in protected affordable housing.

#### CONCLUSION

It is hard to pinpoint the exact year in which the thirty percent rule of thumb became the litmus test for whether housing is affordable, but it likely evolved from the National Housing Act of 1937 and became more ingrained into housing policy when mortgage companies adopted it as a rule of thumb for lending in the 1990s.<sup>227</sup> A number of scholars and practitioners have pointed out the obvious—thirty percent of a household income of \$25,000 is not exactly comparable to thirty percent of a household income of \$250,000.<sup>228</sup> Furthermore, the physical integrity of low-income housing is likely to require rehabilitation that, if not completed, will cause the household to incur costs related to the housing deterioration, such as health care costs. The location of such housing in low-income minority neighborhoods perpetuates segregation and situates inhabitants in communities that are often devoid of assets necessary for a higher quality of life. Rather than possess assets, these neighborhoods expose the residents to stressors such as low-performing schools and environmental hazards.

As laws and regulations dedicate greater attention to the socio-economic determinants of housing, the horizontal inequity between protected

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226. *See* Affirmatively Furthering Fair Housing, 80 Fed. Reg. at 42,272.

227. SCHWARTZ & WILSON, *supra* note 17.

228. *See* STONE ET AL., *supra* note 8, at 14.

affordable housing and unprotected affordable housing will deepen. Implementing an entirely new formula is not practical. The simplicity and repeated use of the thirty percent affordable housing formula mount a challenge to a new calculation. Rather than replace the status quo, this Article is meant to provide information on the bifurcation within low-income affordable housing, and suggest that until policy makers recognize that without incorporating both protected and unprotected affordable housing into plans, the segregation they attempt to avoid will persevere.