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Lessons from California's Statewide Efforts to Affirmatively Further Fair Housing

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Introduction

Due to decades of discriminatory housing policies, Black, Latine, and Native American households across the United States are often disproportionately concentrated in high-poverty neighborhoods and have reduced access to quality schools, transportation, parks, grocery stores, amenities.1 California is other different: most cities across the state have high levels of racial segregation that have gotten worse over the past 20 years.2

Affirmatively **Furthering** Fair Housing (AFFH) strategies aim to reverse these trends by economically and racially fostering inclusive, opportunity-rich communities. These strategies can include building affordable housing in high-reneighborhoods, source improving infrastructure in communities that have been historically disinvested in, or enacting policies to reduce displacement of low-income residents from gentrifying neighborhoods.

Since 2016, the State of California has been more intentionally taking AFFH actions, demonstrating that state governments can play a critical role in both facilitating effective local fair housing planning and enacting statewide policies to promote integrated communities.

Based on a review of California's policies and 17 interviews with staff from fair housing organizations and local, regional, and state government,³ this commentary highlights five strategies that California has taken to advance the state's AFFH goals:

- 1. Codifying AFFH into state law
- 2. Regulating local fair housing planning and implementation
- 3. Incentivizing affordable housing development in high-resource areas
- 4. Developing anti-displacement tools and renter protection policies
- 5. Investing in community revitalization of disadvantaged neighborhoods

Some of these strategies, such as incentivizing affordable housing in high-resource areas, have been developed over several years, while others, such as the development of anti-displacement tools, are still in early stages. This commentary identifies signs of progress, as well as areas where more efforts are needed—for example, to reach the goal of transforming concentrated areas of poverty into areas of opportunity.

Lessons from California can inform other states' fair housing planningwhich soon may be required by the federal government. In 2023, the U.S. Department of Housing and Urban Development (HUD) announced a new proposed Affirmatively Furthering Fair Housing (AFFH) rule to help ensure that every neighborhood offers its residents opportunities to thrive. The rule reinstates and builds on a 2015 federal AFFH rule dismantled in 2018. Despite the federal lull in AFFH policies, stakeholders in California have been steadily working in pursuit of opportunity-rich, racially and economically integrated communities. Both California's AFFH strategies and ongoing challenges offer insights for other states working toward fair housing goals.

California's AFFH Strategies

1. Codifying AFFH into state law

In 2017, Assembly Bill 686 (AB 686) was introduced to embed the duty to affirmatively further fair housing into California state law by creating affordable housing opportunities in high-opportunity neighborhoods and by strengthening infrastructure and other public investments in low-income

neighborhoods. The law was designed to align with the obligations of the 2015 federal AFFH rule and codify California's commitment to affirmatively further fair housing regardless of any turnarounds in federal policy.

The law requires: 1) all housing and community development programs run by public entities to take meaningful actions to affirmatively further fair housing, and 2) all local jurisdictions, as part of their Housing Element process,⁴ to develop robust fair housing plans with specific AFFH goals and actions.

To facilitate compliance with these requirements, California's Department of Housing and Community Development (HCD) has several teams whose roles include AFFH program imple-Housing Element staff mentation. work closely with local jurisdictions on their local land use and housing plans, including helping them develop robust fair housing plans and identify equitable site inventories for future housing developments. The Housing Accountability Unit serves as an enforcement arm. It monitors the AFFH components of local Housing Elements to ensure jurisdictions across the state follow through on meaningful actions to further fair housing goals. Finally, dedicated Fair Housing staff focus on actions that the State itself can take, including by working in partnership with other state agencies to prioritize affordable housing proposed in high-resource areas.

California codified its commitment to foster inclusive, opportunity-rich communities through the passage of AB 686 and subsequent investments for implementation. However, stakeholders have raised a number of concerns with AB 686, including the potential for inconsistency between state and federal requirements (in the event of future federal changes), and the "unfunded mandate" for local jurisdictions to meet the law's requirements.

Another concern that surfaced during the legislative process was the tension between fair housing and climate goals. Many higher-resource neighborhoods are car-oriented suburbs that have higher vehicle miles traveled.5 As a result, pursuing affordable housing in higher-resource areas can run counter to efforts to reduce greenhouse gas emissions. In contrast, efforts to build affordable units near transit can worsen racial segregation, as these neighborhoods are more likely to be communities of color.6 Although steps have been taken to coordinate housing, transportation, and air quality policies,7 the integration of fair housing and climate goals remains an ongoing challenge in California.8

2. Regulating local and regional fair housing planning

To facilitate the local fair housing planning process, HCD provides technical assistance paired with local and regional planning grants that can be used to make progress on fair housing goals. For example, the Association of Bay Area Governments, a regional government entity representing 109 cities and counties, used the state's Regional Early Action Planning Grant to develop tailored data packets that their local governments could use as part of the required fair housing assessment.

In 2020, HCD also published Guidance for All Public Entities and for Housing Elements, which includes step-by-step guidelines on AFFH requirements for the Housing Element, a list of resources, and tips for implementation.⁹

Viewer, an interactive map that jurisdictions can use to explore data that inform their AFFH goals. Within the map, jurisdictions can view data overlays in the following categories: existing affordable housing assets, racially or ethnically concentrated areas, disparities in access to opportunities, fair housing enforcement and outreach capacity, segregation and integration, and disproportionate housing needs/displacement risks.

HCD reviews every local jurisdiction's AFFH plan before certifying their Housing Element—a requirement to be eligible or competitive for many state funding programs. In the most recent round of State review, nearly every local jurisdiction received a findings letter with feedback from HCD on how to strengthen their plans prior to certification. Comments from HCD requesting stronger AFFH analyses and programs were common; for example, a survey of 33 initial findings letters found that 94 percent of letters included comments related to AFFH.¹⁰ The State's feedback on the AFFH components included pushing jurisdictions develop to housing mobility strategies through increasing access to high-opportunity neighborhoods, as well as implementing community place-based strategies for neighborhood improvement.11

3. Incentivizing affordable housing development in high-resource areas

Historically, affordable housing developments have been concentrated in areas characterized by limited resources, high poverty rates, and racial segregation. This concentration reinforces existing patterns of economic and racial inequality and can limit access to opportunity.

Between 2003 and 2015, for example, only 5 percent of Low-Income Housing Tax Credit (LIHTC) awards for new family housing developments were allocated to projects proposed for the highest-opportunity neighborhoods in California, even though these neighborhoods account for 20 percent of the state's census tracts.¹²

As part of its AFFH commitment, the State has been working to rebalance the location of new affordable housing developments. In 2017, state agencies developed an **Opportunity Map** to prioritize affordable family housing development in high-opportunity areas of California. The number of funded affordable housing units for families with children in these neighborhoods increased by over 60 percent in the four years after the policy change.¹³

While this increase translates to a significant jump in the share of new larger family affordable units in higher-resource areas (from percent to 26 percent),14 the majority of family LIHTC projects remain in lower-resource areas of the state. As of 2021, 93 percent of all LIHTCfamily-serving funded units in developments were located outside of the state's highest-resource neighborhoods.¹⁵

Critics of the State's Opportunity Map argue that it directs funding away from low-income neighborhoods, fails to address displacement concerns, and perpetuates cycles of historic disinvestment in communities of color.

For example, members of the California Community-Based Development Collective argue that the map doesn't accurately "define the potential of communities to nurture their residents" and ends up "limit(ing) investment in affordable housing in those communities that require it the most." ¹⁶

In addition, there are several methodological limitations to the Opportunity Map. There is no objective definition of "opportunity," and the dimensions that shape economic mobility pathways include complex elements—such as safe neighborhoods, quality education, and economic vitality—all of which are difficult to measure. Indicators included in the map are also limited to those with comprehensive, publicly available data at the neighborhood level.

4. Developing anti-displacement tools and renter protection policies

Protecting renters and preventing displacement are key tenets of the AFFH mandate. In response, the State has been working to develop anti-displacement tools and establish renter protection policies.

In 2023, HCD released a draft **Neighborhood Change Map** that aims to inform statewide policy for funding affordable housing. The interactive map identifies census tracts that have

undergone substantial racial/ethnic and economic demographic change (often precursors to displacement) and have markers of disproportionate housing needs. The map could help prioritize funding for affordable housing projects proposed in changing neighborhoods as a way to stabilize communities and prevent displacement of low-income residents and people of color.

In 2019, California passed Assembly Bill 1482 (AB 1482) to cap annual rent increases, limiting them to a maximum of 10 percent.¹⁷ AB 1482 also specifies that, after residing in a unit for one year, tenants are shielded from eviction unless there is a specific, permitted reason known as a "just cause."¹⁸

Recent pro-housing laws have also included tenant protection language to mitigate potential displacement pressures. For example, Senate Bill 330 (SB 330—also known as the Housing Crisis Act of 2019), aims to accelerate housing production by streamlining permitting and approvals, while also incorporating tenant protections. SB 330 mandates a "no net-loss" requirement, stipulating that any development project proposing to tear down existing housing must build at least as much housing in its place. In addition, displaced residents receive relocation benefits and a right of first refusal for a comparable unit in the new project at an affordable rent.

5. Investing in community revitalization of disadvantaged neighborhoods

AFFH recognizes that community revitalization strategies, which create opportunity in neighborhoods historically disinvested in, are just

as important as removing barriers to existing high-opportunity places.¹⁹

The State has long had an interest in better supporting community revitalization but has had few mechanisms to effectuate it. Opportunities have generally been limited to federal community development block grants or state-level tools such as planning grants and prioritized applications for LIHTC or other affordable housing funding for projects in designated revitalization areas.²⁰

In 2016, the State created the Transformative Climate Communities (TCC) program, which invests in communities across California that have been designated as disadvantaged²¹ and affected by pollution. The TCC program advances AFFH goals by funding development and infrastructure projects that aim to provide health, environmental, and economic benefits. Since 2018, the TCC program has provided \$326 million in grants to 30 communities, elevating community priorities and allowing residents to shape investments to improve their neighborhoods.

For example, downtown Ontario in southern California, a predominantly Latinx community, was awarded a \$33 million TCC grant for a range of projects, including 101 new affordable housing units, over five miles of bike lanes, and a new small business incubator.²²

Ongoing challenges

Taking a balanced approach: Many stakeholders feel the State is not effectively taking a balanced approach to fostering inclusive, opportunity-rich communities. They contend that the State is emphasizing mobility strategies (such as opening up access to opportunity) without adequate consideration of place-based strategies (such as preventing displacement or investing in concentrated areas of poverty). State government staff recognize that there

are additional opportunities to launch place-based strategies in pursuit of a

balanced approach.

In June 2023, HCD kicked off an Opportunity Framework project to identify new policies or programs that can advance the full range of AFFH objectives, including transforming racially and ethnically concentrated areas of poverty into areas of opportunity. However, funding is a major constraint for comprehensive community development across the state.

One statewide advocate reflected that community revitalization is "primarily a resource issue," and there is a need for "significantly more funding to address historic disinvestment in local communities."²³

Building local capacity for AFFH implementation: Standardized
AFFH requirements can pose unique
challenges to different types of jurisdictions. Small jurisdictions, such as some
in California's Central Valley, may lack
the staff capacity required to complete
AFFH planning.

A consultant who has supported over 30 jurisdictions in their AFFH analyses for the current Housing Element cycle, reflected that some small jurisdictions have "no money, no staff, and no understanding of what AFFH means."²⁴

Large jurisdictions, such as Los Angeles, may find it difficult to meet comprehensive AFFH requirements across huge geographic areas and large populations.

A city staffer in Los Angeles reflected that requirements to analyze leases to evaluate affordability of every property are "just not feasible when you're working at a scale of 600,000 units."²⁵

In rural jurisdictions, a city planner from Humboldt described how areas that both count as "high-opportunity" and are suitable to build affordable housing are limited, which can make it challenging to meet fair housing goals.²⁶

A consultant who worked with multiple Northern California jurisdictions on their AFFH analyses highlighted the need for jurisdictions to appropriately support their planning staff. She described how local planners suddenly had entirely new job requirements with little guidance, and many faced intense community opposition that made their jobs difficult.²⁷

As many local jurisdictions transition from fair housing planning to implementation, sustained capacity building will be critical. Ongoing guidance, resources, and oversight from the State can help keep local implementation efforts on track.

Confronting the rising costs of buildina affordable housina: Funding constraints limit where and how much affordable housing is built, irrespective of local and state planning efforts to affirmatively further fair housing goals. The construction of new affordable housing is expensive—in 2023, for example, the average cost of new construction per unit using LIHTC was \$708,000²⁸—and both state and local funding sources fall short of need. Because of the high costs of construction, it is also difficult to build lower-cost, unsubsidized housing.

A planner in Humboldt commented, "Our wage scale does not match the cost of producing housing," so without a subsidy "we're only producing housing at a level well above median income."²⁹

Some localities have found it frustrating to be held accountable by the State for housing outcomes outside of their control.

A consultant who worked with dozens of California jurisdictions on their AFFH plans, reflected, "Not being able to move the needle on these [AFFH] indicators is a challenge for localities; they're relying on developers and the market to change."³⁰

Building political will: Strong local resistance and NIMBY (not-in-my-backyard) advocates continue to make it difficult to build affordable housing, particularly in exclusionary, high-resource areas throughout the state.

Planning staff in San Diego commented that, second to funding, "community opposition is probably the biggest challenge" in trying to implement the city's fair housing goals.³¹

In the wealthy community of Huntington Beach, local politicians are reluctant to approve affordable housing projects due to resident opposition, and the State of California is suing the City for violating state housing law.³²

Some jurisdictions noted that it was helpful to point to the State as the enforcer, citing state-level requirements to compel local action.

A regional government staff member reflected, "The fact that the State has built up its enforcement capacity and has political oomph behind it seems to be critical, because local governments pay attention to that."33

Interviewees also emphasized the importance of clear, consistent messaging to explain how people benefit from affirmatively furthering fair housing.

A Housing, Planning, and Economic Analyst at the Los Angeles Housing Department reflected on the importance of using data to tell a story in order to "build the consciousness of elected officials and the public about what the disparities are and why they matter." 34

Enforcing AFFH policies throughout the state: Enforcing legislation designed to protect renters is an ongoing challenge. Without comprehensive data on rent levels and tenancy records, it is difficult to enforce the rent caps established by AB 1482. The law can also only be enforced in court, leaving it to tenants to connect with an attorney or legal rights advocacy organization to prove they have been subject to an unlawful rent increase or

eviction. In 2023, the State took its first AB 1482 enforcement action against a landlord who had increased rents by an average of 151 percent.³⁵ It also can be difficult to verify a property's rental history to assess whether developers are abiding by the no net-loss requirements or limits on the destruction of rental properties. Advocates have raised concerns about how policies that make it easier for market-rate developers to build homes play out in different communities.

One advocate stated that, "Streamlining should not be happening in low-income communities that are at high risk of gentrification and displacement. It can have a destabilizing effect, and we should really be approaching those communities in a different way."³⁶

It will also be an ongoing challenge for the State to ensure that over 500 local jurisdictions follow through on their AFFH plans; it remains to be seen how comprehensive AFFH planning by local communities translates to meaningful action.

An analysis by researchers at the University of California, Los Angeles (UCLA) found that at least some jurisdictions "are doing the minimum to comply with the law, rather than using this opportunity to try to achieve ambitious AFFH goals."³⁷

Lessons for other states

California's successes and challenges offer lessons for other states working toward fair housing goals. Based on California's experience, it may be helpful for other states to consider the following strategies.

- 1. Establish a leadership-level staff position dedicated to advancing AFFH goals and facilitating inter-agency partnerships: Assigning responsibility for developing statewide AFFH strategies to a dedicated leadership-level role can make implementation more effective.
- 2. Use data to drive progress toward AFFH goals: Analyzing statewide data can help identify fair housing issues, such as inequities in housing access, quality, and affordability. Data can also be used to more effectively target or prioritize resources, such as directing investments communities into with concentrated areas of poverty, and/or creating affordable housing units in safe communities with high-quality services, education, employment and opportunities.

California's Opportunity Map is one example of using data to prioritize resources for affordable housing development. Regular data collection and analysis can also be used to monitor progress toward AFFH goals and highlight fair housing issues that require additional resources.

3. Design requirements to build on existing state laws or federal AFFH requirements:

Tailoring fair housing legislation or requirements to existing state laws can allow states to use established processes and infrastructure to make AFFH implementation easier. In California, lawmakers attached AFFH requirements to the existing Housing Element process; other

states should look to strengthen their own pre-existing housing review or funding processes. If no such processes exist, states should consider ways to layer additional AFFH programs into the existing federal AFFH process for local jurisdictions.

4. Develop accountability mechanisms, including a mix of incentives and penalties to drive local behavior: Providing grants, technical assistance, or other funding opportunities can encourage local jurisdictions to plan for and follow through on their fair housing goals.

In California, tying transportation funding to a compliant Housing Element has been helpful in overcoming resistance from jurisdictions that may otherwise be less likely to pursue affordable housing development.

States might also penalize jurisdictions that do not meet their fair housing goals with fines or loss of eligibility for certain statewide funding programs. Periodic audits or a process of regulatory oversight by dedicated staff can help ensure ongoing compliance.

5. Pursue a mix of AFFH strategies to meet the needs of different neighborhood types: Across every state, different neighborhoods have unique challenges and opportunities to support fair housing goals.

For example, neighborhoods with high concentrations of poverty may benefit from infrastructure investments paired with anti-displacement strategies, while historically exclusionary neighborhoods might need a state-mandated intervention to build more affordable housing.

A suite of AFFH policies and programs can allow for tailored solutions to meet diverse community needs and provide adaptability as neighborhoods change over time.

As California works to address affirmatively furthering fair housing goals, reversing decades of exclusionary and discriminatory housing practices will take significant and sustained effort. Ultimately, the State will need to continue improving existing strategies and developing new ones to holistically address housing discrimination and foster inclusive, opportunity-rich communities.

Endnotes

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- 2. Menendian, S. et. al. (2021). "The Roots of Structural Racism Project." Othering & Belonging Institute. Retrieved from: https://belonging.berkeley.edu/roots-structural-racism
- 3. Interviewees included staff from local and regional governments (7), state agencies (3), consultancy firms that collectively supported over 80 local jurisdictions on their AFFH analyses (3), and academic and advocacy organizations (4).
- 4. California's Housing Element and the Regional Housing Needs Allocation (RHNA), established in 1969, require all local governments—including cities, towns, and counties—to comprehensively plan for the housing needs of residents across all income levels. Every eight years, local governments develop a Housing Element detailing potential development sites and outlining strategies they will pursue to meet the housing needs of their community.
- 5. To see the overlap between higher-resource neighborhoods and suburbs with higher vehicle miles traveled, compare the California Tax Credit Allocation Committee (TCAC) Opportunity Map and a map of locations with relatively low vehicle miles traveled, according to the state's travel demand model.
- 6. Reina, V. et. al. (2019). "Are Location Affordability and Fair Housing on a Collision Course? Race, Transportation Costs, and the Siting of Subsidized Housing." *Cityscape*, 2,1 no. 1: 125-142. https://www.jstor.org/stable/26608014
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- 9. This guidance was still being developed while many jurisdictions were working on their Housing Element updates, so cities with earlier deadlines began to develop AFFH plans without it.

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- 11. Interview, November 15, 2023.
- 12. The data refer to 9 percent LIHTC developments. See more at: https://tern-ercenter.berkeley.edu/research-and-policy/new-state-policies-aim-to-boost-access-to-opportunity-through-housing/
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- 16. Response to Comments on the Draft 2024 CTCAC/HCD Opportunity Map (2024). California Tax Credit Allocation Committee. Retrieved from: https://www.treasurer.ca.gov/ctcac/opportunity/2024/response.pdf
- 17. The annual rent cap is determined by combining local inflation, as measured by the Consumer Price Index (CPI), with a fixed 5 percent increase to account for market appreciation. However, if this combination exceeds 10 percent, the rent cap is set at 10 percent instead.
- 18. There are two categories of just cause: "at-fault" (i.e., non-payment of rent or lease violations) and "no-fault" (i.e., withdrawal of the property from the rental market). In cases of no-fault just cause evictions, landlords are required to provide relocation assistance to evicted tenants, either as a direct payment or a waiver of the last month's rent.
- 19. Bodaken, M. & Lurie Hoffman, E. (2019). "The Need for a Balanced Approach to Fair Housing." *The Dream Revisited*. Columbia University Press. https://doi.org/10.7312/elle18362-065
- 20. To classify as a revitalization area, the project must be located within one of the following: a Qualified Census Tract (QCT)—a census tract in which at least 50 percent of the households have an income of less than 60 percent of the Area Median Income (AMI)—or a federal Promise Zone. Additionally, the development must contribute to a

concerted community revitalization plan, as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. See more at: https://www.treasurer.ca.gov/ctcac/programreg/regulationso20823.pdf

- To qualify, at least 51 percent of the project area must overlap with incorporated areas or tribal territories in census tracts designated as "disadvantaged" through one or more of the following criteria: 1) being within the top 25 percent of disadvantaged communities, per CalEnviroScreen (CES) 4.0; 2) scoring in the top 5 percent of the Pollution Burden Indicator but without an overall CES 4.0 score due to unavailable or unreliable data; 3) being within the top 25 percent of disadvantaged communities, per CES 3.0; or 4) having all areas within federally recognized tribal boundaries in California. The remaining 49 percent or less of the project area must meet these same criteria or be a low-income community, as defined by Assembly Bill 1550. See more at: https://sgc.ca.gov/programs/tcc/docs/20230308-TCC_R5_Guidelines.pdf
- 22. Ontario Together: Transformative Climate Communities. California Strategic Growth Council. Retrieved from: https://sgc.ca.gov/grant-programs/tcc/docs/20190201TCC_Awardee_Ontario.pdf
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- 33. Interview, November 17, 2023.
- 34. Interview, November 3, 2023.
- 35. Christopher, B. (2023, June 14). *Rents soared 151 percent. Under California's new law, tenants are getting a refund.* CalMatters. Retrieved from: https://calmatters.org/housing/2023/06/california-rent-control-settlement/
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- 37. Monkkonen, P. et. al. (2022, May 24). Affirmatively Furthering Fair Housing in California: A Bumpy Rollout or a Flawed Approach? Policies for Action. Retrieved from: https://policiesforaction.org/blog/affirmatively-furthering-fair-housing-california-bumpy-rollout-or-flawed-approach

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