

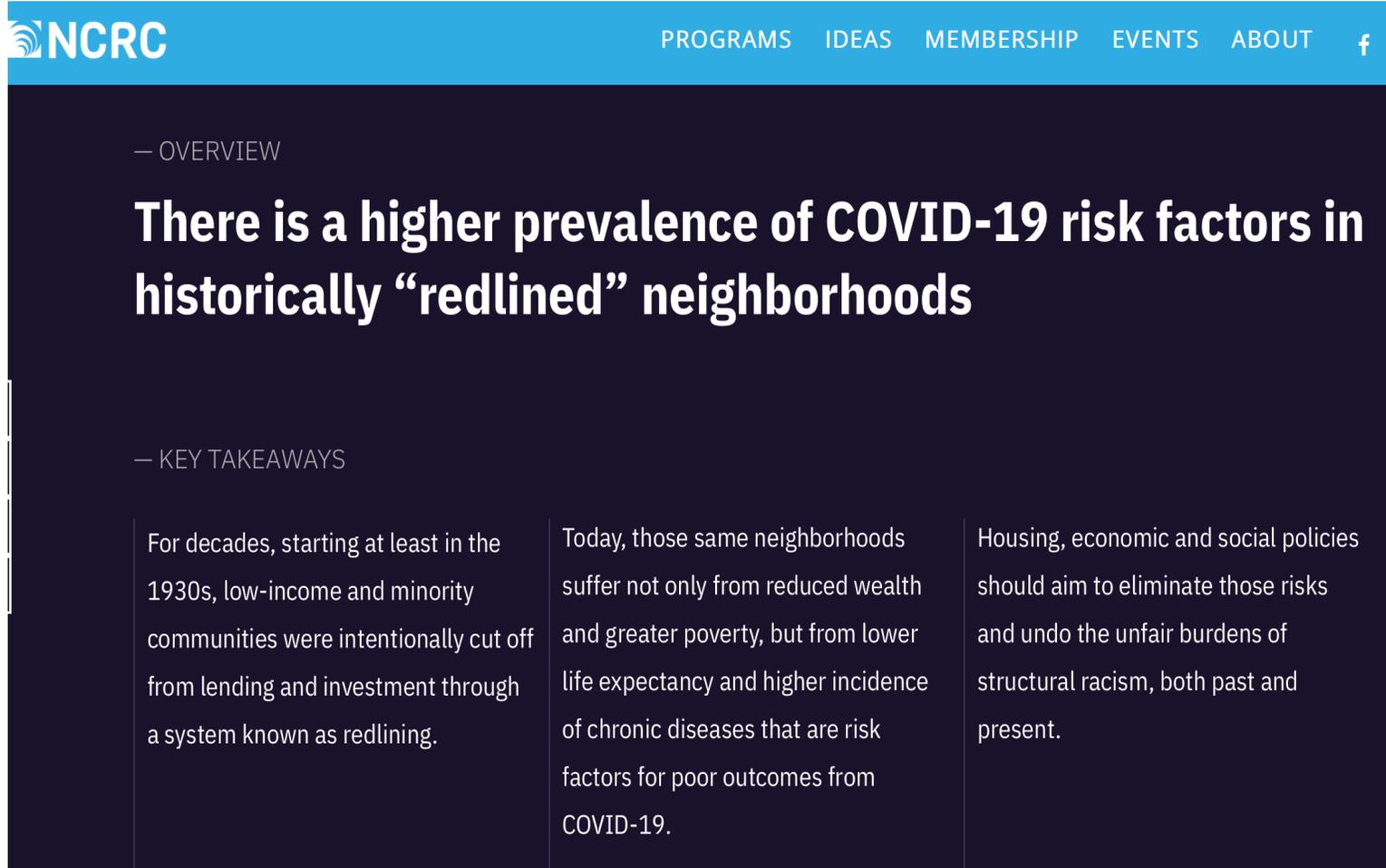


AB 686: Affirmatively Furthering Fair Housing

October 14, 2020

Affirmatively Furthering Fair Housing

- Fair Housing Act
 - HUD must “administer the programs and activities relating to housing and urban development in a manner affirmatively to further” FHA’s policies. 42 U.S.C. § 3608(e)(5).
 - Obligation also applies to all “executive departments and agencies.” 42 U.S.C. § 3608(d).
- Affirmative obligation
 - 2015 HUD Rule (**now withdrawn**): AFFH requires *more than merely prohibiting discrimination*; instead, there exists an obligation to “take the types of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied.” 80 Fed. Reg. at 42,274.



The image is a screenshot of a webpage from the National Housing Law Project (NHLP). The top navigation bar is blue with the NCRC logo on the left and links for PROGRAMS, IDEAS, MEMBERSHIP, EVENTS, and ABOUT on the right. Below the navigation bar, the article title is displayed in large white text on a dark background. Underneath the title, there is a section for 'KEY TAKEAWAYS' which contains three columns of text. The first column discusses the historical practice of redlining in the 1930s. The second column describes the current state of these neighborhoods, including reduced wealth and higher incidence of chronic diseases. The third column discusses the need for housing, economic, and social policies to address these issues.

NCRC

PROGRAMS IDEAS MEMBERSHIP EVENTS ABOUT

— OVERVIEW

There is a higher prevalence of COVID-19 risk factors in historically “redlined” neighborhoods

— KEY TAKEAWAYS

For decades, starting at least in the 1930s, low-income and minority communities were intentionally cut off from lending and investment through a system known as redlining.	Today, those same neighborhoods suffer not only from reduced wealth and greater poverty, but from lower life expectancy and higher incidence of chronic diseases that are risk factors for poor outcomes from COVID-19.	Housing, economic and social policies should aim to eliminate those risks and undo the unfair burdens of structural racism, both past and present.
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Source:

<https://ncrc.org/holc-health/>

- Federal AFFH statutory obligation applies to:
 - HUD and other federal agencies that administer housing & urban development activities and programs
 - Federal funding recipients and subrecipients

A jurisdiction that receives Community Development Block Grant (CDBG) funds must certify that the jurisdiction will affirmatively further fair housing. See 42 U.S.C § 5304(b)(2).

Background: HUD's 2015 AFFH Rule

- Issued in July 2015
 - 80 Fed. Reg. 42,272 (July 16, 2015)
- Created a new fair housing analysis framework, called the Assessment of Fair Housing (AFH)
 - Required HUD grantees and PHAs to examine the relationship between where members of protected classes live and how that impacts access to opportunities such as jobs, transit, and education.
 - Required HUD grantees to devise goals to address those factors that perpetuate segregation and entrench disparities.
- Rescinded and replaced in 2020

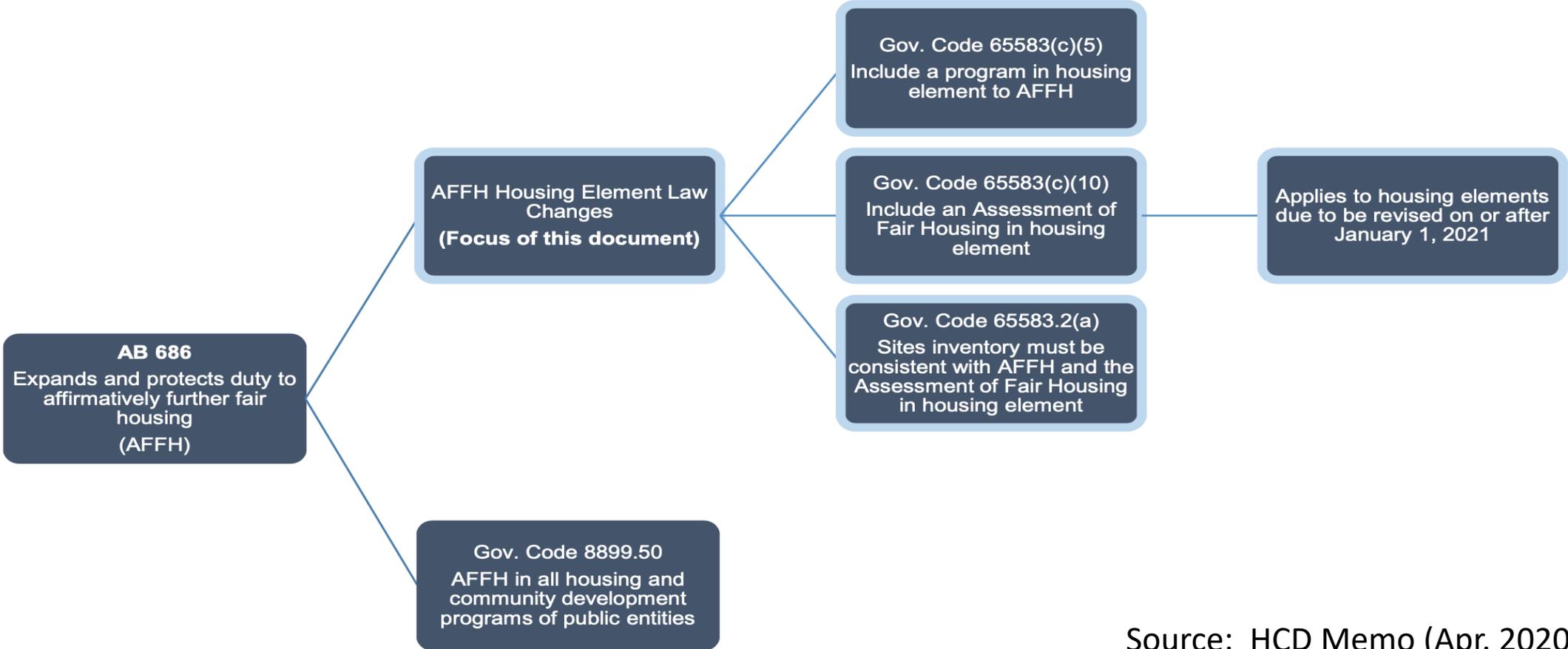
Assembly Bill 686 (2018): Two Main Components

- Generalized AFFH obligation – Gov. Code § 8899.50
 - Applies to “public agencies,” including cities and counties, does not rely on receipt of funds
 - Bases definition of AFFH on federal definition
 - Interpreted consistently with 2015 AFFH Rule (even if repealed)
 - AFFH obligation extends to all activities related to housing & community development
 - Public agencies cannot take an “action that is materially inconsistent with its obligation to affirmatively further fair housing” but cannot be required to take one specific action. Gov. Code § 8899.50(b), (d).
- Explicitly adds affirmatively furthering fair housing considerations into the Housing Element planning process— Gov. Code §§ 65583 & 65583.2

Assembly Bill 686 (2018): Housing Elements

- As of **January 2019**, Housing Elements must include a program that includes the AFFH obligation for protected classes under fair housing law
- For Housing Elements due beginning in **2021**, must include an assessment of fair housing, with the following components:
 - Summary of fair housing issues in the jurisdiction
 - Data analysis (federal, state, and local knowledge) to identify fair housing issues such as segregation, housing need (including displacement)
 - Contributing factors for fair housing issues
 - Fair housing priorities and goals, including metrics and milestones
 - Strategies to implement priorities and goals
 - Can use relevant portions of AFH/AI

HCD Memo – Visual Representation



Source: HCD Memo (Apr. 2020), page 2

Assembly Bill 686 (2018): Implementation by HCD

- Issued summary memo in April 2020
 - Land inventory/ID of sites must be consistent with AFFH duty and assessment of fair housing
 - Meaningful actions include “actions that will promote fair housing opportunities for low- and moderate-income tenants and tenants of affordable housing, including subsidized housing.”
 - Corresponds assessment of fair housing components with recommended parts of the Housing Element
 - Stresses the need of stakeholder engagement and collaboration
- Issued Site Inventory Guidebook in June 2020
 - “For purposes of the housing element site inventory, this means that sites identified to accommodate the lower-income need are not concentrated in low-resourced areas (lack of access to high performing schools, proximity to jobs, location disproportionately exposed to pollution or other health impacts) or areas of segregation and concentrations of poverty. **Instead, sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing.**” (p. 9)
 - Cites CTCAC Opportunity Maps as a possible resource
- Earlier this year, put out a draft of sites inventory form/spreadsheet for public comment
- More in-depth AB 686 guidance is forthcoming this year

Potential strategies

- Place-based and mobility strategies
- Robust tenant protections to stem displacement
- Utility infrastructure in disadvantaged communities
- Addressing environmental hazards that negatively impact low-income communities of color
- Preserving mobile home parks
- Removing barriers for persons w/ disabilities

Potential impediments

- Nuisance/crime-free ordinances & programs
- Ordinances that restrict or prohibit the siting of board-and-care homes (licensed and unlicensed) and sober-living homes

Source: HCD Apr. 2020 Memo, pg. 11

- HCD Memo (April 2020), “AB 686 Summary of Requirements in Housing Element Law,” https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab686_summaryhousingelementfinal_04222020.pdf
- Additional HCD Memo (June 2020) re: Sites Inventory: https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf
- U.C. Berkeley Turner Center (A. Osterberg): *Best Practices for Evaluating and Allocating RHNA*, <http://turnercenter.berkeley.edu/blog/furthering-fair-housing-through-the-rhna-process-in-california>
- HUD AFFH Rule Guidebook (saved version on NHLP site): <https://www.nhlp.org/wp-content/uploads/HUD-AFFH-Rule-Guidebook-Dec.-2015.pdf>

Thank You!

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Disclaimer: Slides provided for informational purposes only and do not constitute legal advice.