Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

Expedited Bill 22-22: Landlord-Tenant Relations – Limitations on Rent Increases

Summary

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 22-22 could have a favorable impact on racial equity and social justice (RESJ) in the County through preventing increases in rental costs that would worsen current inequities in housing security among BIPOC and low-income residents. While BIPOC landlords could potentially be harmed by the Bill, the potential benefits to BIPOC renters exceeds this potential harm. Given that the Bill does not address structural inequities that cause housing insecurity, OLO anticipates the favorable RESJ impact of this Bill will be small.

Purpose of RESJ Impact Statement

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.[2]

Purpose of Expedited Bill 22-22

The goal of Expedited Bill 22-22 is to temporarily limit rent increases, and notifications of rent increases, by landlords in the County.[3] If enacted, any notices of rent increases will be capped at 4.4 percent for six months after the law becomes effective. Since landlords in the County must give 90-days advance notice of a rent increase, the Bill would essentially prohibit rent increases of more than 4.4 percent for nine months after its effective date.

The County Executive cited continuing economic hardship among renters from the on-going COVID-19 pandemic, rising inflation, and rental market pressures as justification for requesting the Bill.[4]

Expedited Bill 22-22 follows two bills that were previously passed by the Council to limit rent increases during the COVID-19 emergency:

- Expedited Bill 18-20, Landlord-Tenant Relations – Rent Stabilization During Emergencies, signed into law on April 24, 2020, prohibited the increase of rent above the voluntary rent guideline[5] during the COVID-19 state of emergency declared by Governor Hogan.
- Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions During Emergencies – Extended Limitations Against Rent Increases and Late Fees, signed into law on November 9, 2021, extended the limitation on rent increases from Bill 18-20 and prohibited the increase of rent above the voluntary rent guideline until May 15, 2022.

If the Bill is enacted, a landlord notifying a tenant of a rent increase exceeding 4.4 percent after May 15, 2022 would be required to send a new notice retracting the increase or modifying it to be no more than 4.4 percent.

Expedited Bill 22-22 was introduced to the Council on July 12, 2022.

In September 2021, OLO published a RESJ impact statement (RESJIS) for Expedited Bill 30-21, Landlord-Tenant Relations – Restrictions During Emergencies – Extended Limitations Against Rent Increases and Late Fees.[6] OLO builds on Expedited Bill 30-21's analysis for this RESJIS.

Housing Insecurity and Racial Equity

Low-wealth and low-income households have been negatively impacted by financial burdens associated with the pandemic. Households lacking access to affordable and safe housing, also known as secure housing, are at greater risk of experiencing evictions and homelessness.[7] At risk households in the County are disproportionately Black and Latinx, and many were at risk of eviction and homelessness prior to the pandemic.

To understand the drivers of racial and ethnic inequities in housing that preceded the COVID-19 pandemic, this RESJIS describes the role that housing segregation in particular has played in creating housing inequities in the County, as well as local data on housing security by race and ethnicity. Please see the RESJIS for Expedited Bill 30-21 for background on the racial wealth divide, another significant driver of housing inequities. The intent of this overview is to demonstrate that racial and ethnic disparities in housing security are neither natural nor random, but instead reflect the government's role in creating and maintaining racial and ethnic inequity in housing.

Racial Segregation in Housing. Segregation by race and ethnicity characterizes the housing market in the County, whereby White residents are concentrated in the most affluent communities. Specifically, in 2015:[8]

- White residents accounted for 47 percent of County residents but comprised 72 percent of District 1 residents (Chevy Chase, Bethesda, and Potomac) where a near majority of households (47 percent) had annual incomes exceeding $200,000 compared to 13 percent of households that had annual incomes less than $75,000.
- Asian residents accounted for 15 percent of County residents but comprised 19 percent of District 3 residents (Rockville and Gaithersburg) where a fifth of households (21 percent) had annual incomes exceeding $200,000 compared to a third of households that had annual incomes less than $75,000.
- Black residents accounted for 18 percent of County residents but comprised 32 percent of District 5 residents (Takoma Park, Silver Spring and Burtonsville) where less than a fifth of households had annual incomes exceeding $200,000 compared to 40 percent of households that had annual incomes less than $75,000.
- Latinx residents accounted for 18 percent of County residents but comprised 26 percent of District 4 residents (Wheaton and Olney) where a sixth of households had annual incomes exceeding $200,000 compared to a third of households that had annual incomes less than $75,000.

While some attribute segregation in the housing market to personal preferences and differences in income and education by race and ethnicity, these explanations often ignore the role of systemic discrimination in driving preferences, income, and educational attainment, as well as housing segregation itself.[9] Moreover, defining housing segregation as a function of personal preferences ignores the role of government in creating segregated communities.

The role of government in creating and sustaining housing segregation begins with the origins of the nation. Slavery, sharecropping, Jim Crow laws, and the Homestead Act were government policies designed to build wealth among White residents by extracting resources from Black, Indigenous, and Other People of Color (BIPOC). Government policies reinforcing housing segregation continued with the New Deal as the Federal Housing Administration (FHA) provided government subsidized financing to White residents and developers to purchase or build homes in White-only enclaves.[10] As noted by Oliver and Shapiro:[11]

> "African Americans who desired and were able to afford homeownership found themselves consigned to central-city communities where their investments were affected by the "self-fulfilling proficiencies" of the FHA appraisers: cut off from sources of new investment, their homes and communities deteriorated and lost value in comparison to those homes and communities that FHA appraisers deemed desirable."

Accompanying these benefits for White homeowners and communities were racial covenants attached to residential property and redlining of neighborhoods predominantly occupied by people of color.[12] Between 1902 and 1948, for example, Silver Spring enacted more than 50 racially restrictive covenants that prohibited owning or renting "the whole or any part of any dwelling or structure thereon, to any person of African descent."[13] Further, Colonel Edward Brook Lee, Maryland politician and Montgomery County private developer, attached racially restrictive covenants to all his suburban properties in the County.[14] The GI Bill was also implemented in racially exclusionary ways that denied Black veterans loans and reinforced segregation.[15]

Collectively, between 1933 and 1978, taxation, housing, and transportation policy lead to the suburbanization of America, enabling 35 million White families to purchase homes in the suburbs but restricting Black families to central cities.[16] Prior to the Fair Housing Act of 1968, affordable government-backed mortgages created a platform for wealth in White neighborhoods, however, only two percent of these secured mortgages were issued to Black applicants.[17] While the Fair Housing Act of 1968 eliminated racially explicit segregation in housing, the policies that built the segregated housing market "have never been remedied and their effects endure."[18]

The growth of Montgomery County was driven by the suburbanization of the Washington Metropolitan region following White flight from Washington, D.C. Housing segregation within the County also reflects the migration of BIPOC families from D.C. to Prince George's County and to the eastern parts of the County, and subsequent White flight from those environs to the western parts of the County (e.g., Bethesda and Potomac). Moreover, given the value of investments in greenlined areas, the value of segregated White housing increased exponentially compared to housing in mixed and predominantly Black areas that were undervalued and underinvested in due to redlining.[19]

Today, racial discrimination in housing continues with predatory lending practices targeted to BIPOC communities (e.g. subprime and other undesirable loans or denied loans);[20] racial and ethnic bias in the rental and real estate markets;[21] and the "implicitly racialized tax code" that favor asset holdings with lower tax rates over income earned, and mortgage holders over renters.[22] Montgomery County's 2015 analysis of the Impediments to Fair Housing Choice acknowledges that housing discrimination in the County on the basis of income source also persists, despite County law that makes such discrimination illegal.[23]

Data on Housing Insecurity. Local data on three metrics of housing insecurity – rent-burdened households, rental assistance during the pandemic, and homelessness – demonstrate that Black and Latinx households in the County are especially housing insecure, reflective of the larger forces of housing segregation and the racial wealth divide. More specifically, in the County:

- In 2019, 66 percent of Latinx renters and 60 percent of Black renters were rent-burdened (expending 30 percent or more of income on rent), compared to 43 percent of White renters and 33 percent of Asian renters.[24]
- Among recent COVID-19 Rent Relief Program clients, 45 percent were Black and 25 percent were Latinx, while 6 percent were White and 2 percent were Asian or Pacific Islander.[25]
- Among single adults experiencing homelessness in 2020, 60 percent were Black, 30 percent were White, 17 percent were Latinx, and 5 percent were Asian or Pacific Islander.[26]
- Among families experiencing homelessness in 2020, 78 percent were Black, 15 percent were White, 9 percent were Latinx, and 2 percent were Asian.[27]

Local data on homeownership also confirms housing inequities by race and ethnicity. In 2019, 75 percent of White and 73 percent of Asian households in the County were owner-occupied, compared to 50 percent of Latinx households and 41 percent of Black households.[28]

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Expedited Bill 22-22 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO analyzed the demographics of renters – the residents who would be most impacted by limitations on rent increases. Census data summarized in Table 1 suggests that BIPOC residents could disproportionately benefit from the Bill, as Black and Latinx households are overrepresented among renter households, while White and Asian households are underrepresented. Further, the median household income of renter households in the County was $69,046, compared to $111,812 for all households in the County, suggesting that lower-income residents could also primarily benefit from the Bill.[29]

Table 1: Percent of All Households and Percent of Renter-Occupied Households by Race and Ethnicity, Montgomery County, MD

Race and ethnicity[30]	All Households	Renter-Occupied Households
Asian	14.3	11.8
Black	17.7	30.3
White	57.3	43.0
Latinx	13.9	18.6

Source: 2020 American Community Survey (Table S2502)

The counterpart of the first question is which groups could be most harmed by this Bill. Reports have documented the struggles of individual investor landlords, often referred to as "mom-and-pop" landlords, amid increasing COVID protections for renters.[31] Comprehensive research on landlords, including with regards to their race, ethnicity, and financial standing is very limited.[32]

Nationally, mom-and-pop landlords own 41 percent of rental units, and are an especially significant provider of rental units in properties with 4 units or less (72.5 percent).[33] Conversely, mom-and-pop landlords own 11.9 percent of rental units in properties with 5 or more units, making them a smaller provider of rental units in larger properties.[34] Census data indicates that most renter households in the County (73.5 percent) live in properties with 5 or more units, suggesting that mom-and-pop landlords may provide a minority of rental housing in the County.[35]

Nonetheless, the potential of smaller landlords selling their properties to institutional investors to alleviate their own financial challenges could pose an issue for preserving affordable housing in the County.[36] This concern could be addressed by engaging landlords and reaching them with rental assistance funds more effectively.[37] Of note, the County reopened the fourth phase of the COVID-19 Rent Relief Program on July 27, 2022.

For the second question, OLO considered the extent to which this Bill could address racial disparities in housing insecurity. As discussed in 'Housing Insecurity and Racial Equity,' BIPOC households in the County experience higher levels of housing insecurity, placing them at higher risk for evictions and homelessness. The majority of BIPOC renter households in the County are rent-burdened, making them sensitive to even modest increases in rent. Rising inflation is causing further financial strain on the budgets of BIPOC and low-income households.[38,39]

Recent reports have documented rapidly rising rents in the region. An analysis of Apartment List data by WAMU found that average rents have grown 9 percent over the last year,[40] double the limitation established by Bill 22-22. Further, several tenants interviewed by WAMU reported having rent increases of 20 percent of more. Table 2 illustrates examples of potential increases in rent with and without the limitations from Bill 22-22. The table uses 9 percent to proxy the potential rent increase without any limitations, though it is important to note that rent increases could be much higher.

Table 2: Potential Rent Change With and Without Limitations (Examples)

If rent is...	Total rent with limitation (4.4 percent increase)	Total rent without limitation (9 percent increase)
$1,000	$1,044 (+ $44)	$1,090 (+ $90)
$1,250	$1,305 (+ $55)	$1,363 (+ $113)
$1,500	$1,566 (+ $66)	$1,635 (+ $135)
$1,750	$1,827 (+ $77)	$1,908 (+ $158)
$2,000	$2,088 (+ $88)	$2,180 (+ $180)

OLO anticipates Bill 22-22 could have a favorable impact on RESJ through preventing increases in rental costs that would worsen current inequities in housing security among BIPOC and low-income residents. While BIPOC landlords could potentially be harmed by the Bill, the potential benefits to BIPOC renters exceeds this potential harm. Further, the Bill also aligns with best practices recommended by the Eviction Lab at Princeton, the Urban Institute, and PolicyLink for reducing the risk of evictions among low-income households.[41] Given the Bill does not address structural inequities that cause housing insecurity and allows for rent increases that could meaningfully constrain household budgets, OLO anticipates the favorable RESJ impact of this Bill will be small.

Recommended Amendments

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[42] OLO finds Expedited Bill 22-22 could have a favorable impact on RESJ by preventing the widening of racial disparities in housing insecurity.

Should the Council desire to actualize more significant reductions in housing inequities via legislation, PolicyLink's Priorities for Advancing Racial Equity Through the American Rescue Plan offers the following recommendations for investing in "frontline, Covid-impacted, and disinvested communities" and for "preventing displacement and increased community ownership of land and housing" that could be considered as potential amendments to this Bill:[43]

- **Support projects that affirmatively further fair housing** by ensuring BIPOC residents have equitable access to low-poverty neighborhoods with community assets and by investing in low-income communities. Strategies aimed at increasing access to low-poverty neighborhoods include inclusionary zoning and increasing the value of housing voucher payments in low-poverty neighborhoods. The County's Moderate Price Dwelling Unit (MPDU) Program aligns with recommended practices for promoting inclusionary zoning in low-poverty communities.
- **Maintain strong eviction moratoria and provide funding to eliminate rent debt** and support struggling landlords and nonprofit affordable housing providers. Best practices include pairing landlord assistance with eviction protections and lease renewals, protecting renters from exorbitant rent increases, and programs that ensure undocumented people can access services. Of note, the County has expanded funding for legal services for households facing evictions; established a rental assistance program for households experiencing financial hardship from COVID-19 (where applicants are not required to prove citizenship status); and enacted multiple bills (18-20, 30-21) to limit exorbitant rent increases.
- **Expand services and acquire permanent housing for people without housing.** The County currently provides a continuum of services for individuals and families experiencing homelessness, but most clients do not receive permanent housing. Among single adults served in 2020, 44 percent were placed in permanent supportive housing while the remainder received rental support or time-limited rental subsidies of up to 24 months; among families served in 2020, only 12 percent were placed in permanent supportive housing.[44]
- **Fund acquisition strategies to transfer housing and land to community ownership and stewardship,** including rapid-response acquisition funds, community land trusts, and land banks to quickly purchase properties that come up for sale and compete with speculators. Montgomery County's Housing Investment Fund (HIF) and Housing Acquisition and Preservation Funds could potentially be used toward these ends.

Caveats

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. https://www.racialequitytools.org/glossary
[2] Ibid
[3] Bill 22-22, Landlord-Tenant Relations – Limitations on Rent Increases, Montgomery County, Maryland, Introduced July 12, 2022. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20220712/20220712_10B.pdf
[4] Memorandum from County Executive to Council President, Bill 22-22, Landlord-Tenant Relations – Limitations on Rent Increases
[5] The Voluntary Rent Guideline is established annually by the County Executive based on the rental component of the Consumer Price Index for the Washington-Metropolitan Area. More information: https://www.montgomerycountymd.gov/DHCA/housing/landlordtenant/voluntary_rent_guideline.html
[6] Racial Equity and Social Justice Impact Statement for Expedited Bill 30-21, Office of Legislative Oversight, Montgomery County, Maryland, September 9, 2021. https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill30-21RESJ.pdf
[7] "Housing Insecurity and the COVID-19 Pandemic," Consumer Financial Protection Bureau, March 2021. https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf
[8] Leah Hendey and Lily Posey, "Racial Inequities in Montgomery County 2011-15," Urban Institute, December 2017. https://www.urban.org/research/publication/racial-inequities-montgomery-county-2011-15
[9] Richard Rothstein, *The Color of Law: A Forgotten History of How Government Segregated America*, 2017
[10] Ibid
[11] Melvin Oliver and Thomas Shapiro, "Disrupting the Racial Wealth Gap," Sociology for the Public, May 7, 2019. https://journals.sagepub.com/doi/full/10.1177/1536504219830672
[12] Kilolo Kijakazi, et. al, "The Color of Wealth in the Nation's Capital," The Urban Institute, November 1, 2016. https://www.urban.org/research/publication/color-wealth-nations-capital
[13] "DAC Historical Research Notes & Timeline", Montgomery Planning, Accessed July 21, 2022. https://montgomeryplanning.org/wp-content/uploads/2020/02/Historical-Overview-and-Development-Patterns-Staff-Research-Paper.pdf
[14] Ibid
[15] Kijakazi, et. al
[16] Ibid
[17] Thomas Hanchett, "The Other 'Subsidized Housing' Federal Aid for Suburbanization 1940s-1960s" (in John Bowman, et. al, From Tenements to Taylor Homes: In Search of an Urban Policy in Twentieth Century America, 2000). https://www.historysouth.org/wp-content/uploads/2015/12/The-Other-22Subsidized-Housing22-Federal-Aid-To-Suburbanization-.pdf
[18] Rothstein
[19] Kijakazi, et. al
[20] Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*, 2019
[21] Collection of Fair Housing and Discrimination Studies, The Urban Institute. https://www.urban.org/tags/fair-housing-and-housing-discrimination
[22] Dorothy Brown, *The Whiteness of Wealth: How the Tax System Impoverishes Black Americans and How We Can Fix it*, 2021
[23] 2015 Analysis of Impediments to Fair Housing Choice, Department of Housing and Community Affairs, Montgomery County, Maryland. https://www.montgomerycountymd.gov/DHCA/Resources/Files/community/fair_housing/2015_Analysis_of_Impediments_to_Fair_Housing_Choice.pdf
[24] Gross Rent as a Percentage of Household Income in the Past 12 Months, Table S0201: Selected Population Profile in the United States, 2019 American Community Survey, Census Bureau. https://data.census.gov/cedsci/table?t=002%20-%20White%20alone%3A004%20-%20Black%20or%20African%20American%20alone%3A012%20-%20Asian%20alone%3A400%20-%20Hispanic%20or%20Latino%20%28of%20any%20race%29%3AIncome%20and%20Poverty%3ARace%20and%20Ethnicity&g=0500000US24031

[25] "COVID-19 Rent Relief Update: Week of Jul 11 – 17," DHHS Pulse Report: COVID-19 Impact and Recovery, Department of Health and Human Services, Montgomery County, Maryland, July 20, 2022. https://www.montgomerycountymd.gov/covid19/Resources/Files/pulse/DHHS-Pulse-220720.pdf

[26] Memorandum from Linda McMillan to County Council, "FY22 Operating Budget: Homeless Services, Rental Assistance, and funding through Housing Initiative Fund," May 11, 2021 (See PDF page 19). https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf

[27] Ibid

[28] "Percent of Owner-Occupied Households by Race/Ethnicity: Montgomery County, MD," National Equity Atlas, Accessed July 22, 2022. https://nationalequityatlas.org/indicators/Homeownership#/?geo=04000000000024031

[29] Table S2503: Financial Characteristics, 2020 American Community Survey, Census Bureau. https://data.census.gov/cedsci/table?t=Owner%2FRenter%20%28Tenure%29&g=0500000US24031&tid=ACSST5Y2020.S2503

[30] Latinx is an ethnicity rather than a race. Therefore, Latinx people are included in multiple racial groups throughout this impact statement, unless where otherwise noted.

[31] Michelle Conlin, "Selling Out: America's Local Landlords. Moving In: Big Investors," Reuters, July 29, 2021. https://www.reuters.com/business/finance/selling-out-americas-local-landlords-moving-big-investors-2021-07-29/

[32] "Landlords," Message from PD&R Senior Leadership, Office of Policy Development and Research (PD&R), U.S. Department of Housing and Urban Development, June 11, 2018. https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-061118.html

[33] Scholastica (Gay) Cororaton, "Landlord Statistics from the 2018 Rental Housing Finance Survey," National Association of Realtors, September 15, 2020. https://www.nar.realtor/blogs/economists-outlook/landlord-statistics-from-the-2018-rental-housing-finance-survey

[34] OLO Analysis of 2018 Rental Housing Finance Survey

[35] OLO Analysis of 2020 American Community Survey

[36] Michelle Conlin

[37] "Intentional Landlord Engagement," Emergency Rental Assistance Program, U.S. Department of the Treasury, Accessed July 29, 2022. https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices/landlord-engagement

[38] Jonathan Fisher, "The Impact of Different Inflationary Pressures due to Income Inequality and Racial Disparities in the United States Today," Washington Center for Equitable Growth, May 26, 2022. https://equitablegrowth.org/the-impact-of-different-inflationary-pressures-due-to-income-inequality-and-racial-disparities-in-the-united-states-today/

[39] Monique Beals, "Nonwhite Voters More Likely to Say Inflation Hitting Them," The Hill, March 14, 2022. https://thehill.com/policy/finance/598145-nonwhite-voters-more-likely-to-be-affected-by-spiking-inflation-poll/

[40] Ally Schweitzer, "Rents are Climbing in the D.C. Area, with No Relief in Sight," WAMU, July 18, 2022. https://wamu.org/story/22/07/18/dc-rent-increases/

[41] See citations for The Eviction Lab and Urban Institute cited by Natalia Carrizosa, COVID-19 Recovery Outlook: Evictions in Rental Housing, Office of Legislative Oversight, June 16, 2020, and PolicyLink, 10 Priorities for Advancing Racial Equity Through the American Rescue Plan: A Guide for City and County Policymakers (link in citation 41). https://montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/COVID-19Recovery-Evictions.pdf

[42] Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

[43] "10 Priorities for Advancing Racial Equity through the American Rescue Plan: A Guide for City and County Policymakers," PolicyLink, 2021. https://www.policylink.org/node/63646

[44] Ibid (see PDF page 21)