



## **BILL 24-0168**

# **RACIAL EQUITY IMPACT ASSESSMENT DISTRICT'S OPPORTUNITY TO PURCHASE AMENDMENT ACT OF 2021**

**TO:** The Honorable Phil Mendelson, Chairman, Council of the District of Columbia  
**FROM:** Brian McClure, Director, Council Office of Racial Equity  
**DATE:** May 12, 2021

### **COMMITTEE**

Committee on Housing and Executive Administration

### **BILL SUMMARY**

Bill 24-0168 amends the District's Opportunity to Purchase Act (known as DOPA) to increase the number of eligible buildings and to clarify how DOPA should be implemented.

The purpose of DOPA is to preserve and increase affordable housing in the District by permanently locking in affordable rents when an apartment building is sold through a DOPA transfer.

### **CONCLUSION**

Bill 24-0168 has the potential to advance racial equity in the District of Columbia.

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## **BACKGROUND**

- **Black and Latinx households have the highest rates of rent burden in the District, with more than one in two households spending over 30% of their income on rent. Racial inequities in education and income, coupled with hiring discrimination, job segregation, and other factors all contribute to the racial divides in rent burden.**
- **Unaffordable rent leads to residential instability, physical and mental health impacts, evictions, displacement, and periods of homelessness.**
- **There is a shortage of affordable housing in the District. To address this shortage, Bill 24-0168 amends the District's Opportunity to Purchase Act to take advantage of opportunities to: preserve existing affordable housing in the District, increase the number of permanently affordable homes, and create mixed-income communities.**

Centuries of government-sanctioned racist policies have resulted in pervasive racial inequities in housing outcomes. Redlining<sup>1</sup> and racial covenants<sup>2</sup> on top of years of restrictions on wealth building opportunities<sup>3</sup> have led to dramatic inequities in homeownership rates across racial groups. In the District, 49% of white households own their home, while 35% of Black households and 30% of Latinx households do.<sup>4</sup>

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<sup>1</sup> [Mapping Segregation in D.C.](#), Sarah Shoenfeld, DC Policy Center.

<sup>2</sup> Ibid.

<sup>3</sup> [The Color of Wealth in the Nation's Capital](#), The Urban Institute, November 2016.

<sup>4</sup> [Homeownership Rates by Race in the District of Columbia](#), National Equity Atlas.

The racial inequities in homeownership rates mean that households of color<sup>5</sup> are more likely to rent—and when they rent, their rent is more likely to be unaffordable. One metric for affordability is *rent burden*, which measures what percentage of a household’s income goes to paying their rent. The higher the percentage, the higher the burden.<sup>6</sup> Black and Hispanic households experience the highest rates of rent burden in the District, with more than one in two households spending over 30% of their income on rent.<sup>7</sup> Racial inequities in education,<sup>8</sup> hiring discrimination,<sup>9</sup> job segregation,<sup>10</sup> wealth inequities, and income inequities all contribute to the inequities in rent burden.<sup>11</sup> Combined, these realities exacerbate the racial divides in disposable income between the District’s households of color and their white counterparts.

**FIGURE 1**  
**Black and Hispanic households have the highest rates of rent burden in the District.**

RACE AND ETHNICITY	SHARE OF HOUSEHOLDS SEVERELY RENT BURDENED* These households pay more than 50% of their income on housing.	SHARE OF HOUSEHOLDS MODERATELY RENT BURDENED These households pay 30-50% of their income on housing.	TOTAL SHARE OF DC HOUSEHOLDS WITH RENT BURDEN
WHITE	17.3%	17.2%	34.5%
ASIAN/OTHER	19%	26.4%	45.4%
BLACK	34.9%	18.3%	53.2%
HISPANIC**	38.6%	19.5%	58.1%

\*Households with zero or negative incomes are counted as severely burdened, while households paying no cash rent are counted as without burden.

\*\*In this chart, Hispanic households may be of any race. Black, Asian/Other, and white households are non-Hispanic. Unfortunately, these tabulations did not make specific data available about Pacific Islanders or Indigenous populations.

## The Outcomes of Unaffordable Rent

Unaffordable rent and the lack of homeownership can have real and long-term effects on the physical, mental, and emotional well-being of residents. The list below is not exhaustive but intends to illustrate the profound importance of housing, especially for Black, Indigenous, and other people of color. These residents experience the added layer of racism and its consequences.

### Residential Instability

Wards 7 and 8, where over 90% of residents are Black,<sup>12</sup> had the highest rates of current and expected residential instability according to the 2018 DC Housing survey.<sup>13</sup> In this context, “residential instability”

<sup>5</sup> When CORE refers to “communities of color,” we are referring to Black, Indigenous, Latinx, Asian American, Pacific Islander, and Native Hawaiian populations. We do so while acknowledging that each community of color has a unique history and experience of racism in the United States, and in particular, in the District of Columbia.

<sup>6</sup> It is worth noting that the affordability standard of “30% of income on rent” has [been critiqued](#). A more thorough discussion of this critique follows in the “Racial Equity Impact” section.

<sup>7</sup> [Tabulations of US Census Bureau, 2016 American Community Survey 1-year Estimates using the Missouri Data Center MABLE/Geocorr14](#), Joint Center for Housing Studies of Harvard University.

<sup>8</sup> [DC Racial Equity Profile](#), D.C. Policy Center and Council Office of Racial Equity.

<sup>9</sup> [Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination](#), Marianne Bertrand and Sendhil Mullainathan, National Bureau of Economic Research.

<sup>10</sup> [DC Racial Equity Profile](#), D.C. Policy Center and Council Office of Racial Equity.

<sup>11</sup> Ibid.

<sup>12</sup> [2021 Demographics](#), DC Health Matters.

<sup>13</sup> [DC Housing Survey Insights](#), Office of the Deputy Mayor for Planning and Economic Development and The Lab @ DC, 2018.

means a resident has moved at least once in the last five years due to housing costs and expects that they will need to move again within the next three years for the same reason.

Researcher Matthew Desmond notes that “residential instability often brings about other forms of instability in families, schools, and communities that compromise the life chances of adults and children.”<sup>14</sup>

### **Impacted Physical + Mental Health**

A review of the literature by the Pew Charitable Trusts shows “there is strong evidence that housing insecurity and unaffordability can harm physical and mental health.” Research has linked housing costs to stress and poor health and illuminated how “displacement is associated with increased hospital or emergency room visits.”<sup>15</sup> Health can also be affected when “unaffordable housing...force[s] households to divert finances away from health-related expenses such as food, health care, or prescriptions.”<sup>16</sup>

The COVID-19 pandemic further illustrated the importance of housing for residents’ health and wellbeing, pushing the Centers for Disease Control and Prevention to place a moratorium on evictions “to prevent the further spread of COVID-19.”<sup>17</sup>

The health effects of unaffordable rent disproportionality impact communities of color and compound existing racial health inequities.<sup>18</sup>

### **Displacement**

Unaffordable housing can and already has forced families out of the District altogether. In 1970, 71.1% of DC residents were Black. In 2015, 48% were Black.<sup>19</sup> From 2000 to 2013, at least 20,000 Black residents were displaced from the District of Columbia. DC was one of seven cities in the country that accounted for nearly half of the country’s gentrification and had the highest intensity of gentrification (based on percentage of eligible gentrifying neighborhoods).<sup>20</sup>

### **Evictions**

Nonpayment of rent is the most frequent reason that landlords evict tenants<sup>21</sup> and eviction spurs a chain reaction. Desmond found that “because many landlords reject applicants with recent evictions, evicted tenants are pushed to the very bottom of the rental market and often are forced to move into run-down properties in dangerous neighborhoods.”<sup>22</sup>

A Georgetown University report on eviction in DC highlights that “eviction prevention is an economic and racial justice issue...The stark racialized geography of evictions in the District highlights a remarkable overlap between residential segregation and housing instability. Eviction filings are spatially concentrated in majority Black neighborhoods with the highest poverty rates in the city.”<sup>23</sup>

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<sup>14</sup> [Forced Relocation and Residential Instability among Urban Renters](#), Matthew Desmond, Carl Gershenson, Barbara Kiviat, Social Service Review, June 2015.

<sup>15</sup> [Health Note: Housing Element, Comprehensive Plan Amendment Act of 2020 Bill 24-0001](#), Health Impact Project, The Pew Charitable Trusts.

<sup>16</sup> Ibid.

<sup>17</sup> [Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19](#), Centers for Disease Control and Prevention.

<sup>18</sup> [Health Disparities by Race and Ethnicity](#), Sofia Carratala and Connor Maxwell, Center for American Progress, May 7, 2020.

<sup>19</sup> [Goodbye to Chocolate City](#), DC Policy Center.

<sup>20</sup> [Shifting Neighborhoods: Gentrification and cultural displacement in American Cities](#), National Community Reinvestment Coalition.

<sup>21</sup> [Does your city rank high or low when it comes to evictions?](#), Michele Lerner, The Washington Post, December 2017.

<sup>22</sup> [Evictions and the Reproduction of Urban Poverty](#), Matthew Desmond, American Journal of Sociology, July 2012.

<sup>23</sup> [Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability](#), Brian J. McCabe, Eva Rosen, Georgetown University, McCourt School of Public Policy, Fall 2020.

## Homelessness

46% of all District residents are Black or African American. Yet on one night in 2021, 86.5% of the residents who experienced homelessness were Black or African American.<sup>24</sup> According to The Community Partnership for the Prevention of Homelessness, Black residents are “disproportionately affected by the drivers of homelessness in the District.”<sup>25</sup> Research shows that homelessness is directly linked to housing affordability.<sup>26</sup>

These outcomes also have further consequences for safety, education opportunities, and job stability.

## The District’s Affordable Housing Stock

The District plays a critical role in building and preserving affordable housing stock targeted to the needs of Black residents and other residents of color in dire need of safe, accessible, and affordable housing. Just focusing on the availability and location of housing stock, however, is not enough. The processes to help residents find and secure affordable housing must also be accessible, which requires a careful examination of the process through a racial equity lens.<sup>27</sup>

Based on the definitions provided in the District’s 2019 Housing Equity Report, there are two kinds of affordable housing:

- **Dedicated Affordable Housing** – which is income- and rent-restricted housing supported or subsidized by local and federal programs for households ranging from extremely low-income earning less than 30% of the Median Family Income (MFI) up to households earning less than 80% of the MFI.
- **Naturally-occurring Affordable Housing** – which is unsubsidized and not income-restricted but rather is privately-owned housing with market-based rents affordable to low- and moderate-income residents.<sup>28</sup>

## Number of Affordable Units

There is a shortage of affordable housing stock in the District today. A 2015 report from the DC Fiscal Policy Institute notes that “the District now has half as many low-cost units as in 2002...suggest[ing] that there is very little low-cost housing in the private market and that subsidized housing is now virtually the only source of inexpensive apartments.”<sup>29</sup>

But it may only be a source of affordable housing for current tenants of subsidized housing. Testimony on behalf of the Legal Aid Society of the District of Columbia highlighted that “the centralized waiting list of subsidized housing...has been closed for seven years and still numbers just under 40,000 families.”<sup>30</sup>

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<sup>24</sup> [2021 Point-in-Time Count Demographics Dashboard](#), The Community Partnership for the Prevention of Homelessness.

<sup>25</sup> Ibid.

<sup>26</sup> [Homelessness Rises Faster Where Rent Exceeds a Third of Income](#), Chris Glynn and Alexander Casey, Zillow Research.

<sup>27</sup> Examining a process through a racial equity lens means developing tailored systems and tools that center and account for the needs of residents of color. This is done by: 1) identifying and considering past and current systemic racial inequities; 2) identifying who benefits or is burdened from a decision; 3) disaggregating data by race, and analyzing data considering differing impacts and outcomes by race; and 4) evaluating the program, activity, or decisions to identify policies, plans, or requirements, that reduce systemic racial inequities, eliminate race as a predictor of results, and promote racially equitable development outcomes.

<sup>28</sup> [Housing Equity Report: Creating Goals for Areas of Our City](#), Department of Housing and Community Development and the Office of Planning, October 2019. These terms are set and widely used within the District Government, which is why CORE has chosen to reference them here.

<sup>29</sup> [Going, Going Gone: DC’s Vanishing Affordable Housing](#), Wes Rivers, DC Fiscal Policy Institute, March 2015.

<sup>30</sup> Testimony of Beth Mellen, Supervising Attorney, Housing Law Unit, Legal Aid Society of the District of Columbia, Public Roundtable regarding “District’s Opportunity to Purchase Act,” April 21, 2021.

## Location of Affordable Units

The District's 2019 Housing Equity Report also noted that "Washington, DC's current supply of dedicated affordable housing is concentrated in some areas of the city and almost non-existent in others, restricting low income residents' choice and opportunities of where to live in the District."

"Notably," says the 2019 draft of the *Analysis of Impediments to Fair Housing Choice*, "the geographic distribution of the most and least affordable housing units across D.C. neighborhoods tracks (and significantly contributes to) segregation."<sup>31</sup> The consequences of segregation are numerous and ripple out to almost every aspect of a person's wellbeing. For example, the report notes:

Education, being highly dependent on where people live, is also highly segregated, and students experience stark differences in access to opportunity. School segregation and neighborhood disparities in access to proficient schools have a mutually reinforcing relationship with housing segregation, and local education policies have a strong influence in shaping this dynamic.

Stark disparities are evident in the Employment analysis. The extreme difference between the Labor Market and Job Proximity Indices' levels for Black and White residents indicates that Black residents are systematically denied the same access to opportunity that [w]hite residents enjoy.<sup>32</sup>

## Diversity of Affordable Units

The October 2019 Housing Equity Report concluded that, "Securing affordable, family-sized units is increasingly difficult for low-income families with four or more people."<sup>33</sup>

This echoes the findings of a report from June 2019, entitled *An Assessment of the Need for Large Units in the District of Columbia*. This report found that there is an uneven supply of large housing units across wards, and only one in four are rental units. In addition, "the supply of [large] rental housing affordable for households making less than 30% and 50% of AMI falls far short of the need."<sup>34</sup> Given the racial inequities in homeownership rates, income distribution, and that families of color are more likely to live in multigenerational households,<sup>35</sup> we see an increased need but fewer options for communities of color.

## Timing Considerations

The need for available affordable housing is high and it is urgent. Construction takes time and the creation of affordable housing, especially for people with very low incomes, is lagging.<sup>36</sup> And as previously mentioned, the waitlist for subsidized housing has been closed for seven years.

Preserving affordable units and converting market-rate units to affordable units can expedite addressing the need for affordable housing.

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<sup>31</sup> [Analysis of Impediments to Fair Housing Choice \(Draft for Public Comment\)](#), DC Department of Housing and Community Development, the Lawyers' Committee for Civil Rights Under Law, and the Poverty and Race Research Action Council (PRRAC), September 2019.

<sup>32</sup> Ibid.

<sup>33</sup> [Housing Equity Report: Creating Goals for Areas of Our City](#), Department of Housing and Community Development and the Office of Planning, October 2019.

<sup>34</sup> [An Assessment of the Need for Large Units in the District of Columbia](#), Peter A. Tatian, Leah Hendey, and Scott Bruton, Urban Institute and the Coalition for Nonprofit Housing and Economic Development, June 2019.

<sup>35</sup> [A record 64 million Americans live in multigenerational households](#), D'Vera Cohn and Jeffrey S. Passel, Pew Research Center, April 2018.

<sup>36</sup> [The Washington Area Is Slow To Build New Affordably Priced Housing, Says Group](#), Ally Schweitzer, DCist, March 2021.

## The District’s Opportunity to Purchase Act

The sale of a rental apartment building in the District triggers two District programs: the Tenant Opportunity to Purchase Act (TOPA) and the District’s Opportunity to Purchase Act (DOPA).

The Tenant Opportunity to Purchase is a right written into District law.<sup>37</sup> It states that “tenants in buildings up for sale must be offered the first opportunity to buy the building”<sup>38</sup> or to assign that right to their chosen purchaser before other buyers can buy it. The District’s Department of Housing and Community Development (DHCD) “encourages tenants to exercise this right—it stabilizes city neighborhoods, combats urban displacement, and helps tenants become homeowners.”<sup>39</sup> While TOPA can result in homeownership for tenants (an ideal outcome as homeownership is a critical component of wealth building<sup>40</sup>), the end result is not always homeownership. Tenants often partner with an affordable housing developer to preserve their affordable housing and lock in future rehabilitation of the property.

If tenants do not exercise their TOPA rights for an apartment building with five or more units, then the District has the “opportunity to purchase” the building. DHCD has identified three priorities for using this opportunity, in the following order:

- 1) Preserve existing affordable housing in the District
- 2) Increase the number of covenant-protected affordable homes
- 3) Create mixed-income communities.<sup>41</sup>

According to the law, either the District government can purchase the building, or it can assign the opportunity to purchase the building to a developer who must agree to maintain the property as affordable. Only developers that are pre-qualified by DHCD and submit proposals are eligible to be chosen by DHCD to exercise the District’s opportunity to purchase the building.

DOPA was enacted in 2008 but regulations explaining how to implement the law were not in place until November 2018.<sup>42</sup> Since then, however, no purchase via a DOPA transfer has ever been made. In that time, DHCD was notified about the sale of eighty-seven DOPA-eligible properties. The agency expressed interest and notified the forty pre-qualified developers<sup>43</sup> about fifteen cases via requests for proposals. Eleven of these properties were eventually purchased by tenants—but no responses were received to any of the fifteen requests. No pre-qualified developers thought they could sustain these properties within the affordability restrictions of the current law.

Bill 24-0168 seeks to amend the original law to make DOPA more effective at accomplishing the three goals above. As it currently stands, DOPA only applies to buildings with dedicated affordable housing. With the amendments proposed by Bill 24-0168, DOPA would be applied to any 5+ unit apartment building for sale in the District. If a DOPA transfer were to occur, the building would transition to having dedicated affordable housing units.

DHCD has a list of [pre-qualified affordable housing developers](#) who applied to be considered as a buyer for a DOPA transfer. The required qualifications include a “demonstrated commitment to affordable housing”

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<sup>37</sup> [Tenant Opportunity to Purchase Act of 1980](#), DC Official Code § 42-3404.

<sup>38</sup> [Tenant Opportunity to Purchase Assistance](#), DC Department of Housing and Community Development.

<sup>39</sup> Ibid.

<sup>40</sup> [Is Homeownership Still an Effective Means of Building Wealth for Low-Income and Minority Households? \(Was it Ever?\)](#), Christopher E. Herbert, Daniel T. McCue, Rocio Sanchez-Moyano, Harvard University, Joint Center for Housing Studies, 2013.

<sup>41</sup> Testimony of Polly Donaldson, A Public Roundtable on the District’s Opportunity to Purchase Act, April 21, 2021.

<sup>42</sup> [Notice of Final Rulemaking – District Opportunity to Purchase Act \(DOPA\)](#), DCMR Title 14 Chapter 24. Published November 2018.

<sup>43</sup> [Mayor Bowser Moves the District One Step Closer to Using DOPA to Preserve Affordable Housing for DC Residents](#), May 3, 2019.



and “demonstrated capacity and successful experience with owning, operating, managing, and developing multi-unit affordable rental housing in the last five years.”<sup>44</sup>

It is worth noting that DOPA is an affordable housing program that requires no District funds beyond administration. If an affordable housing provider is assigned purchasing rights, there is no accompanying promise of a subsidy. Many of the proposed amendments attempt to clarify requirements and implementation to help developers: 1) make financial decisions with more certainty 2) sustain buildings with no subsidies through more flexible affordability requirements and 3) qualify for federal financing.

A step-by-step explanation of how DOPA could work from start to finish is provided below. For simplicity, the process reflects the proposed process amendments, which are noted in italics. (A provision-by-provision plain language explanation of the original law and the proposed amendments is included in the Appendix.)



## STEPS LEADING UP TO PURCHASE

- 1) A rental apartment building in the District with *five or more units* goes on sale.
- 2) The building’s owner notifies DHCD of the sale based on both TOPA and DOPA laws.
- 3) In parallel, the tenants and the District consider the opportunity to buy the building.
- 4) The District reviews the building and decides if it is interested in registering for its DOPA rights. The District’s decision is based on criteria including: if the location is in a neighborhood with average rents above Fair Market Rent,<sup>45</sup> if there is a significant number of family size units, if there are many elderly tenants or tenants with disabilities, and if the building’s affordable housing covenant<sup>46</sup> expires within the next five years.<sup>47</sup>
- 5) DHCD sends a written statement to the tenants and property owner expressing their interest in buying the building (or assigning the rights to buy the building).
  - This Statement of Interest must be sent within thirty days of the notification in Step Three.
  - Once the owner receives the statement, the District has 150 days to negotiate the sale.
- 6) DHCD notifies the pre-qualified developers about the building via a Request for Proposals (RFP).
- 7) The tenants do not buy the building, either failing or choosing not to exercise their TOPA rights.
  - If the tenants buy the building, the DOPA process ends at this step.
- 8) Interested pre-qualified developers submit their proposals to DHCD. Proposals must *include an affordability plan* detailing how developers will preserve the building’s existing affordable housing and where possible, add additional affordable units.
- 9) DHCD selects the most qualified proposal and announces the results.
- 10) The chosen developer negotiates with the building’s owner during the remainder of the 150 days.

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<sup>44</sup> [Request for Qualifications to Pre-Qualified Potential Assignees under the District Opportunity to Purchase Act](#), Department of Housing and Community Development, 2018. In DOPA’s regulations, the District decided that it will not exercise DOPA directly to purchase a property but that it will only do so through a chosen prequalified developer. Therefore, this list of pre-qualified developers is especially important.

<sup>45</sup> Fair Market Rents are published by HUD on a regular basis. They “represent the cost to rent a moderately-price dwelling unit in the local housing market.” ([source](#))

<sup>46</sup> An affordable housing covenant is a binding agreement that is attached to the land and requires the owner, and any future owners, to maintain housing affordability.

<sup>47</sup> [Selection Criteria for Prioritizing Building\(s\) for District Opportunity to Purchase Act \(DOPA\) Purchase and Assignment of Rights](#), Department of Housing and Community Development.



## STEPS AFTER PURCHASE

- 11) The building is sold to the chosen developer.
- 12) The chosen developer maintains the building per DOPA law and the *affordability covenant*. This means:
  - *For the first twelve months, the rent and utilities for existing tenants cannot increase beyond what they were at Step Three.*
  - i. *After the first twelve months, the rent and utilities for existing tenants can increase annually by whichever is lower between: the annual increases allowed by the Rent Stabilization Program in the Rental Housing Act OR the increase allowed by local and federal rental affordability programs.*
  - *For any units that are vacant at Step Three or become vacant before the covenant is entered:*
    1. *If the most recent monthly rent was affordable at 60% MFI, that unit must remain affordable for households at 60% MFI or less*
    2. *If the most recent monthly rent was affordable at 30% MFI, that unit must remain affordable for households at 30% MFI or less*
    3. *The affordability plan will set the rent for all remaining units (and for units with an unknown most recent rent) for the new owner and all future owners.*
- 13) An *affordability covenant attached to the property* preserves the affordable units (for as long as the building remains housing).

## RACIAL EQUITY IMPACTS

While some of Bill 24-0168’s provisions have positive racial equity impacts (if DOPA is in fact fully exercised), some of the provisions are race neutral or left open to interpretation, leaving room for possible negative repercussions.

**Positively, Bill 24-0168’s amendments preserve and create permanently affordable housing for families with low or moderate incomes.** If DOPA is used to purchase a building, the District must create a binding agreement requiring the new owner—and all future owners—to keep the building affordable *permanently*. This binding agreement is called a covenant and is included in the proposed amendments.

Specifically, all units that were affordable at 60% MFI at the time DHCD was notified of the sale must remain rent-and-income-restricted. Any additional units listed in the affordability plan must also be rent-and-income restricted. (The original law did not require income restrictions, which do help ensure that the units go to people who need them most.) In addition, Bill 24-0168 controls and limits rent increases for all tenants. These affordability restrictions must stay in place for as long as the building is used as housing—a notable difference from the ongoing concern of affordability controls expiring on many existing affordable units.

DOPA’s preservation and creation of affordable housing for families earning low and moderate incomes is a matter of racial equity. In the District overall, “Black, Latino, and Asian residents have a much higher poverty rate than white residents,” with Black residents experiencing the highest poverty rate at 21.6%.<sup>48</sup> In addition, Black households are overrepresented in low-income brackets—“out of all DC residents earning less than \$10,000 per year, seventy-five percent are Black.”<sup>49</sup> While the definition of affordable could do

<sup>48</sup> [DC Racial Equity Profile](#), D.C. Policy Center and Council Office of Racial Equity.

<sup>49</sup> Ibid.



more to address these racial inequities in income (see the discussion on race neutrality in MFI calculations below), the proposed bill takes an important step.

**Positively, Bill 24-0168 could be instrumental in preserving and creating affordable housing in high opportunity areas.** Bill 24-0168 greatly expands the number of buildings that could be eligible for DOPA. Any rental building with five or more units is now eligible (if tenants choose not to or fail to buy it). Because the original law limited DOPA to buildings with existing affordable units, it also limited the number of locations that DOPA could be triggered—affordable housing in the District is not equally distributed across wards.<sup>50</sup>

With Bill 24-0168, more neighborhoods will have eligible buildings, and therefore DOPA transfers could occur in more neighborhoods. Some of these neighborhoods may have greater access to both necessities and amenities, sometimes referred to as “communities of opportunity.” This potential would also give tenants more of a choice—to choose the neighborhood that works best for them. Preserving and increasing affordable units in higher opportunity areas would also reduce the effects of concentrated poverty and stark [racial segregation](#) in the District.

“Concentrated poverty” is the term used when the poverty rate in a Census tract is 30% or more. Areas of concentrated poverty suffer from a “lack of healthy food options, top-performing public schools, and quality medical care. High-poverty neighborhoods are also more likely to expose residents to crime and environmental hazards, such as lead and smog.”<sup>51</sup> In the District, 25% of all children were living in concentrated poverty—but 40% of the District’s Black children are living in high poverty areas.<sup>52</sup>

In 1970, the District was rated as “highly segregated” according to a segregation, or “dissimilarity,” index. In 2015, the District still qualified as “highly segregated.”<sup>53</sup> The consequences of racially segregated neighborhoods are well documented and often stark, according to the Robert Wood Johnson Foundation. Black and Hispanic people “who live in highly segregated and isolated neighborhoods have lower housing quality, higher concentrations of poverty, and less access to good jobs and education. As a consequence, they experience greater stress and have a higher risk of illness and death.”<sup>54</sup>

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<sup>50</sup> [Housing Equity Report: Creating Goals for Areas of Our City](#), Department of Housing and Community Development and the Office of Planning, October 2019.

<sup>51</sup> [Concentrated Poverty](#), Annie E. Casey Foundation.

<sup>52</sup> [Children Living in High Poverty, Low-Opportunity Neighborhoods](#), Annie E. Casey Foundation.

<sup>53</sup> [Goodbye to Chocolate City](#), David Rusk, D.C. Policy Center, July 2017.

<sup>54</sup> [What’s the Connection Between Residential Segregation and Health?](#), Donald F. Schwarz, April 3, 2018.

**Positively, DHCD’s selection criteria for prioritizing buildings for District “purchase” incorporate the specific needs of communities of color.** In addition to what is laid out in the law, DHCD has published criteria<sup>55</sup> they would include as they consider whether to exercise their opportunity to assign the District’s right to purchase. The list includes the following, analyzed through a racial equity impact lens:

ADDITIONAL CRITERIA	RACIAL EQUITY ANALYSIS
Location in neighborhoods with average rents above the US Department of Housing and Urban Development’s (HUD) Fair Market Rent	As noted in the Background section, affordable housing is not equitably distributed across the District. If the DOPA regulations continue to target more affluent areas for permanently affordable housing, it could have a positive outcome.
Significant number of family sized units and amenities	Families of color are <a href="#">more likely to live in multigenerational households</a> — meaning that they have a greater need for larger homes but even fewer options.
Affordable housing covenants that will expire within the next five years	By locking in permanent affordability, it removes the constant threat of expiration looming over tenants and the District (as it tries to maintain affordable housing stock).

Additional criteria could be considered to further racial equity, especially if DOPA’s regulations are rewritten should Bill 24-0168 pass. For example, there could be additional specificity regarding which neighborhoods should be targeted, DOPA could be actively used to prevent displacement, and deliberate action could be taken to maintain racial and ethnic diversity in neighborhoods.

**Positively, Bill 24-0168’s timing aligns with the predicted end of the public health emergency. This provides a chance to address both the anticipated concerns and anticipated opportunities.** The COVID-19 pandemic exacerbated the long-standing housing crisis in DC. Testimony on behalf of the Legal Aid Society of the District of Columbia cited that the devastating loss of employment was followed by increased difficulty in paying rent. Over one year since the beginning of the pandemic, almost one in five District tenants were not current on their rent and a similar number “had little or no confidence in their ability to pay April 2021 rent.” The testimony continues, “ninety-five percent of the families reporting that they are not current in their rent and over 80 percent of the families with little or no confidence in their ability to pay in April 2021 are Black and Latinx.”<sup>56</sup>

The Coalition for Nonprofit Housing and Economic Development (CNHED) estimates that this coincides with at least 100 rental apartment buildings coming on the market at the end of the public health emergency, which contain about 4,000 units.<sup>57</sup> The TOPA and DOPA programs had their timelines tolled, or paused, during the public health emergency. Therefore, the end of the emergency will likely present a significant opportunity for both TOPA and DOPA. Preserving these units as affordable or transitioning these units to affordable could support many residents of color who were hardest by the pandemic at an important inflection point in the District’s recovery.

**Positively, Bill 24-0168’s amendments expand the number of DOPA-eligible buildings but do not interfere with the important wealth building opportunity provided by TOPA.** While TOPA will not always result in tenants becoming homeowners, TOPA can provide a wealth building opportunity to the

<sup>55</sup> [Selection Criteria for Prioritizing Building\(s\) for District Opportunity to Purchase Act \(DOPA\) Purchase and Assignment of Rights](#), Department of Housing and Community Development.

<sup>56</sup> Testimony of Beth Mellen, Supervising Attorney, Housing Law Unit, Legal Aid Society of the District of Columbia, Public Roundtable regarding “District’s Opportunity to Purchase Act,” April 21, 2021.

<sup>57</sup> Ibid.

tenants-turned-homeowners, where DOPA does not—in the event of DOPA, tenants can only rent. However, because DOPA can only be used if a building’s tenants do not exercise their rights to purchase the building under TOPA, DOPA does not interfere with this wealth building opportunity.

**Concerningly, the definition of “affordable” is race neutral and ignores large differences in Median Family Income across racial groups.** Bill 24-0168’s amendments to DOPA define affordable housing using the Median Family Income (MFI) for all residents in the region. This definition is race neutral—but MFI and structural affordability challenges across racial groups are dramatically different.

The income distribution for Black families is centered at around 50-60% regional MFI, not at 100% MFI (where it would be in a racially equitable society). By using 60% regional MFI to define affordability, the bill does not incorporate the reality for many of the District’s Black residents. The MFI of Black District households is \$46,201,<sup>58</sup> about 50% of MFI for a household of one, and less than 50% MFI for a household of two, three, or four people.<sup>59</sup> Regardless of household size, a median Black household in the District could not afford what the Act proposes to define as affordable.<sup>60</sup> Without reconsidering the income thresholds, this inequity could be addressed by explicitly targeting buildings with units for families earning a lower MFI (like 30% MFI) for DOPA transfers.

Positively, the proposed amendments allow building owners to use income averaging. This means a property can have some tenants who make less than 60% MFI—if their incomes are averaged with families with higher incomes—to arrive at an average building affordability at 60% MFI. This 1) creates housing for a broader range of incomes while maintaining a certain level of financial feasibility even without deep operating subsidies and 2) may help provide additional opportunities to families at 50%, 40%, or 30% MFI.

[Testimony provided](#) during the public roundtable for Bill 24-0168 contextualizes the 60% MFI threshold: this threshold intends to make permanently affordable properties sustainable for developers, given that development funding from the District is not attached to DOPA. However, it may be worth considering how targeting the output of development sustainability will help the District address some of the negative consequences of unaffordability noted earlier.

**Concerningly, universally defining “affordable” rent at 30% of household income disregards how much money remains for other critical expenses.** The standard of “30% of income on rent” is often used as a measure of housing affordability, despite the fact that the 70% of income “left over” varies widely between families with high incomes compared to families with lower incomes. Using the same standard for all income levels ignores how much money would remain for other critical expenses, such as childcare, food, household necessities, healthcare, and transportation.<sup>61</sup>

Imagine a simplified scenario where three four-person households in the District each pay 30% of their income in rent. Imagine that one household makes the area’s [Median Family Income](#) (MFI) of \$126,000, another makes 60% MFI (\$75,600), and a third makes 30% MFI (\$37,800). After paying rent, the first household would have \$88,200 for their other expenses. The second would have substantially less: \$52,920.

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<sup>58</sup> [Median Household Income by Race/Ethnicity](#), DC Health Matters.

<sup>59</sup> [Inclusionary Zoning 2020 Maximum Income, Rent, and Purchase Price Schedule](#), Department of Housing and Community Development.

<sup>60</sup> In addition, just looking at income does not account for the racial wealth gap. Even if a household of color makes the same as a white household, they do not have as much of a financial safety net to rely on.

<sup>61</sup> [The Rent Eats First: Rental Housing Unaffordability in the US](#), Whitney Airgood-Obrycki, Alexander Hermann, Sophia Wedeen, Joint Center for Housing Studies of Harvard University, January 2021.

And the third household at 30% MFI would have even less: \$26,460. For all three households, this amount of residual, or left over, income is deemed “enough” for their four-person families in the District of Columbia.

Consider this in a racial equity context: Black households in the District are overrepresented in low-income brackets.<sup>62</sup> The affordability covenants will lock in this 30% standard in perpetuity, potentially prolonging the dynamic where many Black households are expected to live with less in the long-term.

## **FURTHER CONSIDERATIONS**

If DOPA transfers do occur, B24-0168 has the potential to advance racial equity in the District of Columbia. The bill could permanently preserve and create affordable housing for households that are low to moderate income, where Black residents and other residents of color are overrepresented. The following considerations (in addition to the concerns above) may help provide further opportunities for advancing racial equity.

### **TENANT/RESIDENT CONSIDERATIONS**

#### **Tenants have no formal role in the DOPA process.**

Holland and Knight, a law firm in the District, issued an alert when the DOPA regulations were released in 2018. It cited that DOPA “seems to be best targeted to developers...who would like to add affordable rental projects to their portfolios without the involvement of tenants in the process.”<sup>63</sup>

While no part of Bill 24-0168 reduces or overwrites tenant rights, there is no formal role for tenants to engage in the DOPA transfer process. Tenants would have actively declined TOPA at the time of a DOPA transfer, but that is not a sign that they do not want a say in the building’s—their home’s—new management. When their housing is undergoing such a drastic change, the tenants’ voices would be especially important.

#### **The legislation does not provide an avenue for income building and appears to penalize tenants for increasing their income. The bill does not explore a rent-to-own option.**

While income restrictions ensure that affordable units are provided to tenants with the highest need, these restrictions create other issues. Namely, households must stay at those income levels to keep their housing. While the bill’s income averaging provision allows for some flexibility in the building overall, this may not always equate to flexibility for an individual household. These tenants may be participating in other programs with penalizing income thresholds, but this barrier could be reexamined within the context of DOPA transfers to support income growth and help to advance racial equity. Another consideration worth exploring may be a rent-to-own opportunity that might begin to address some of the more systemic barriers tenants of color experience.

#### **Developers self-certify on their adherence to critical tenant protection laws.**

The District should rigorously vet pre-qualified developers to ensure they will manage the building well and provide quality, safe housing to District residents. As the regulations stand, it appears that developers must self-certify their adherence to important tenant protection laws such as the Fair Housing Act (FHA) and the Lead Safe Housing Rule. To the extent possible, DHCD should independently and additionally review companies for concerns like FHA violations and DCRA complaints.

#### **The amendments do not include a deadline for a regulations update.**

Ten years elapsed from the enactment of DOPA to final regulations. In this time, the District could have learned about DOPA’s efficacy and the flaws in the law as originally written. Instead, this learning began in

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<sup>62</sup> [DC Racial Equity Profile](#), D.C. Policy Center and Council Office of Racial Equity.

<sup>63</sup> [DHCD Issues District Opportunity to Purchase Act Final Regulations](#), June L. Marshall, Holland & Knight Alert, December 3, 2018.

2019, once final regulations were in place. Although the original law included a provision specifying that rules must be issued by February 22, 2009, the Mayor failed to adhere to that requirement. Bill 24-0168 could be strengthened to include accountability measures to ensure full compliance if it chooses to establish a rules deadline.

**The amendments do not establish a system or cadence for monitoring disparate impacts or other unintended consequences along racial lines.**

DOPA is a relatively new policy tool to the District and to the nation. It is critically important that DHCD (or another executive agency such as the Mayor’s Executive Office of Racial Equity) monitor the short-term indicators and longer-term outcomes associated with the bill. Tenant demographics, including race, should be tracked whenever possible. In addition, it may be important to closely monitor any unintended consequences of covenants.

**DEVELOPER CONSIDERATIONS**

**There is no established cadence for pre-qualifying new developers or recertifying current pre-qualified developers.**

It does not appear that there is a schedule for pre-qualifying new developers for DOPA. Creating a schedule would set expectations and create a fairer process for developers, especially developers of color. In addition, it is not clear if or how qualifications of pre-qualified developers are continually checked after a developer’s initial application.

**The RFP process requires quick access to capital, disadvantaging Black owned businesses and businesses owned by other communities of color. There are no preferences for minority-owned developers or companies in the DOPA property bidding process.**

According to Holland & Knight, DOPA “seems to be best targeted to developers with large capital or quick access to capital.”<sup>64</sup> If this is true, it systematically disadvantages businesses owned by communities of color, who have historically been denied wealth building opportunities and continually discriminated against in lending.<sup>65</sup> Further, other qualification criteria may have acted as barriers to block out minority-owned developers from being eligible to participate.

In addition, the original DOPA law, Bill 24-0168, and existing regulations all miss an opportunity to provide a preference to minority-owned companies.<sup>66</sup>

**Neither the law nor the regulations require transparency in RFP review.**

While no DOPA transfer has occurred to date, it is unclear how much transparency there will be if a transfer does take place. The public, tenants, and pre-qualified developers should understand why a proposal was chosen. This will 1) help other pre-qualified developers understand how to improve their future proposals, 2) reduce the potential for existing relationships to influence the decision that should be prioritizing tenants and District goals, and 3) avoid some of the same transparency issues that exist at the Housing Production Trust Fund.<sup>67</sup>

<sup>64</sup> [DHCD Issues District Opportunity to Purchase Act Final Regulations](#), June L. Marshall, Holland & Knight Alert, December 3, 2018.

<sup>65</sup> [Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables](#), Christine Kymn, Small Business Administration Office of Advocacy, January 2014.

<sup>66</sup> [District Opportunity to Purchase Act: Frequently Asked Questions](#), DC Department of Housing and Community Development, December 2018.

<sup>67</sup> [It’s Time to Make the Housing Production Trust Fund More Transparent](#), Doni Crawford, DC Fiscal Policy Institute, June 2019.

## **ASSESSMENT LIMITATIONS**

Alongside the analysis provided above, the Council Office of Racial Equity encourages readers to keep the following limitations in mind:

**Assessing legislation’s potential racial equity impacts is a rigorous, analytical, and uncertain undertaking.** Assessing policy for racial equity is a rigorous and organized exercise but also one with constraints. It is impossible for anyone to predict the future, implementation does not always match the intent of the law, critical data may be unavailable, and today’s circumstances may change tomorrow. Our assessment is our most educated and critical hypothesis of the bill’s racial equity impacts.

**This assessment intends to inform the public, Councilmembers, and Council staff about the legislation through a racial equity lens.** As a reminder, a REIA is not binding. Regardless of the Council Office of Racial Equity’s final assessment, the legislation can still pass.

**This assessment aims to be accurate and useful, but omissions may exist.** Given the density of racial equity issues, it is unlikely that we will raise *all* relevant racial equity issues present in a bill. In addition, an omission from our assessment should not: 1) be interpreted as a provision having no racial equity impact or 2) invalidate another party’s racial equity concern.



## APPENDIX

The [District Opportunity to Purchase Act](#) and the proposed amendments in [Bill 24-0168](#) are highly technical. We, the Council Office of Racial Equity, rewrote the law in plain language to better understand the original law and the proposed amendments for ourselves. We've included the "translation" below in case it is helpful. Please note that this is not a substitute for [the law](#).

### Subchapter IV-A.

## District's Opportunity to Purchase

### §§ 42-3404.31 – 42-3404.37

#### § 42-3404.31. DISTRICT'S OPPORTUNITY TO PURCHASE CERTAIN HOUSING ACCOMMODATIONS.

**431(a)** The District can purchase apartment buildings for sale. The apartment building must have 5 or more units. This opportunity is also given to the building's tenants.

**431(b)** The District can assign this "opportunity to purchase" to another party.

**431(c)** The District has the same rights as a tenant or tenant organization to file an administrative complaint or a court case if the building owner is not complying with DOPA.

#### § 42-3404.32. LIMITATIONS ON THE DISTRICT'S OPPORTUNITY TO PURCHASE.

**432(a)** When their apartment building goes on sale, tenants can purchase it first. If the tenants do not (or cannot) buy the building, the District will have the opportunity.

**432(b)** When the apartment building goes on sale, the owner must notify the District. This notice is called the "offer of sale." If the District is interested, the District must tell the owner within 30 days of receiving the offer of sale.

**432(c)(1)** The District can only take advantage of this opportunity if 25% of the apartments in the building are affordable.

**432(c)(2)** A unit is "affordable" if the current rent and utilities are 30% (or less) of the household's monthly income. The household's monthly income must be 50% of the area median income. AMI is determined by the US Department of Housing and Urban Development (HUD) and is adjusted for household size.

**AMENDMENT** | The District can exercise its opportunity to purchase on all for sale apartment buildings with five or more units.

#### § 42-3404.33. LIMITATIONS ON THE DISTRICT AS PURCHASER OF A HOUSING ACCOMMODATION.

**433(a)** If the District (or developer assigned by the District) purchases an apartment building based on this legislation, they must continue to follow the legislation as an owner.

**433(b)(1)** The new owner must maintain rents for existing tenants at whichever is lower:

- the monthly rent paid at the time of the "offer of sale" OR
- 30% of the existing tenant's household income.

**AMENDMENT** | The new owner must maintain affordable rents for existing tenants (at the time of the offer of sale) as follows:

- (A) For the first twelve months, rent and utilities cannot increase above the

- amounts paid (at the time of the offer of sale)
- (B) After the first twelve months, the rent can increase every year. However, the increase must be equal to whichever is lower:
  - ii. the annual increases allowed by the Rent Stabilization Program in the Rental Housing Act
  - iii. the allowable increase under local and federal rental affordability programs

**433(b)(2)** Household income will be calculated according to [this HUD regulation](#).

**433(b)(3)** The new owner must notify tenants how household income and rent will be calculated.

**433(b)(4)** Tenants can challenge a rent amount or income calculation by filing a petition with the Rent Administrator, who leads the Rental accommodations Division within DHCD. The Rent Stabilization Program procedures apply to the petition.

**433(b)(5)** The rent of an affordable unit cannot increase more than 10% per year.

**433(b)(6)** The new owner may impose new income restrictions, but not on existing tenants.

**433(c)(1)** As long as the building remains housing, all affordable units (that existed at the time of the offer of sale) must remain affordable.

**AMENDMENT** | If DOPA is used to purchase a building, the District must create a binding agreement requiring the new owner (and all future owners) to keep each unit rent-and-income-restricted if it was affordable at 60% MFI or below at the time of the offer of sale. Any additional units listed in the affordability plan must also be rent-and-income restricted. This must be the case for as long as the building remains housing. This binding agreement is called a covenant.

**433(c)(2)(A) + (B)** For any unit that becomes vacant:

- (A) If the vacating tenant made 60% AMI and paid 30% or less in rent and utilities, the unit must remain affordable for a new tenant at or below 60% AMI
- (B) If the vacating tenant made 30% AMI and paid 30% or less in rent and utilities, the unit must remain affordable for a new tenant at or below 30% AMI

**AMENDMENT** | For any unit that is vacant at the offer of sale or becomes vacant before the affordability covenant is entered:

- (A) If the most recent monthly rent was affordable at 60% MFI, that unit must remain affordable for households at 60% MFI or less
- (B) If the most recent monthly rent was affordable at 30% MFI, that unit must remain affordable for households at 30% MFI or less
- (C) The affordability plan will set the rent for all remaining units (and for units with an

	<p>unknown most recent rent) for the new owner and all future owners.</p> <p>(D) The District can waive (A) and (B) for all or some of the vacant units before the covenant is signed to increase the project’s financial and operational feasibility. The affordability plan then would guide setting the rents.</p>
<p><b>433(c)(3)</b> Vacancies must be filled so that at least a third of units are affordable for households at 30% AMI, one third are affordable for households at 60% AMI, and one third are affordable for households at 80% AMI.</p>	<p><b>AMENDMENT</b>   This section is deleted.</p>
<p><b>433(d)</b> If a unit in the building was not affordable (at the time of the offer of sale), the new owner must develop an affordability plan to explore ways to increase the number of affordable units.</p>	<p><b>AMENDMENT</b>   The new owner must develop an affordability plan to meet sections (c)(2)(A) and (B) and if possible, increase the number of rent-and-income-restricted units affordable at 60% MFI or below. The plan may also include income restrictions above 60% MFI if the average building limit stays at 60% MFI or below. In addition, the number of units affordable at 30% MFI and 60% MFI at the time of the offer of sale must remain (or increase).</p>
<p><b>433(e)</b> This section did not exist in the original law.</p>	<p><b>AMENDMENT</b>   Important definitions:</p> <ol style="list-style-type: none"> <li>(1) <b>Most recent monthly rent</b> is the rent and utilities prior to the date of the offer of sale</li> <li>(2) <b>Rent-and-income-restricted-unit</b> is a unit restricted to households with an annual income limit and with rents accordingly restricted</li> <li>(3) <b>Median family income</b> means the median family income for the “Washington Metropolitan Statistical Area” and adjusted for household size. The District and parts of Maryland, Virginia, and West Virginia make up the Washington Metropolitan Statistical Area. Adjusting MFI for household size will follow <a href="#">this law</a>.</li> <li>(4) <b>Maximum rent</b> means the highest rent that can be charged for a unit. This means that rent and utilities cannot be more than 30% of the household’s</li> </ol>

income (accounting for applicable MFI and household size). Household size will be determined according to [this regulation](#).

#### **§ 42-3404.34. PROCEDURE FOR DISTRICT TO EFFECTUATE PURCHASE.**

**434 (a)** After the building owner receives the District’s written letter of interest, The District has no less than 150 days to negotiate a sale.

**434 (b)** For every day the owner does not provide the necessary information, the negotiation period will extend by one day.

**434 (c)** If the building’s tenants form a tenant organization (?) and deliver their application to the District, the District will have fifteen days (in addition to the 150 days) to negotiate a contract of sale.

**434 (d)** The District will have sixty days from the contract’s execution to complete settlement.

**434 (e)** If the existing owner provides a tenant a time extension in their TOPA timeline, the existing owner must also notify the District of the extension and the District will receive the same extension.

#### **§ 42-3404.35. RIGHTS OF TENANTS NOT ABROGATED.**

**435** No part of this law takes away the rights of tenants or the rights of tenant organizations.

#### **§ 42-3404.36. ASSIGNMENT OF DISTRICT RIGHTS.**

**436(1), (2)** The District can assign the opportunity to purchase to another party. This party must (1) demonstrated that they can own and manage the apartment building for its remaining useful life and (2) agree to maintain the affordability of the housing development. If the assigned party sells the building, all future owners must also maintain its affordability.

#### **§ 42-3404.37. RULES.**

**437** The District must issue regulation on this legislation within sixty days of 12/24/2008.