



2021 Foreclosure Prevention and Mortgage Lending Priorities November 2020

Strong communities and markets need responsible lending rules that give borrowers, especially low-income and Black and Latinx borrowers, a fair shake at the dream of owning and keeping a home. NCLC highlights priorities in four essential subject areas. The federal government should take decisive action to combat pervasive harm from the pandemic, expand opportunity in communities of color, and grow equity in the mortgage markets.

DAY ONE PRIORITIES

- **Convene a cross-Administration working group on sustainable homeownership in communities of color.**
- **Extend the foreclosure moratorium for government backed loans by six months.** ([HEROES Act](#)).
- **Extend the availability of forbearance beyond 2020 for homeowners facing COVID-19 hardships on FHA, USDA and VA mortgages, as current forbearance deadlines fail to account for the rise in COVID cases.** ([HEROES Act](#)).
- **Announce that the CFPB will protect COVID-affected homeowners from foreclosure after mortgage forbearance by issuing an Interim Final Rule under Regulation X specifying that the 120-day pre-foreclosure period runs from the end of a COVID-related forbearance or foreclosure moratorium.** ([HEROES Act](#)).
- **Require mortgage companies to make forbearance automatic for homeowners who are 60 days late on their mortgages during the COVID-19 emergency in order to lower the risk of foreclosure from a prolonged, unaddressed delinquency.** ([HEROES Act](#)).
- **Continue FHA's and the Government-Sponsored Enterprises' (GSE) policy of purchasing and insuring recently-originated loans that go into forbearance during the COVID-19 emergency, but end their imposition of fees and special indemnification requirements for these loans.** ([Coalition letter](#)).
- **Announce the initiation of a rulemaking to withdraw the CFPB's "Seasoned Qualified Mortgage" rule** ([NCLC group comments](#)) **and review the CFPB's General QM rulemaking to ensure that it requires an individualized assessment of a borrower's ability to repay.** ([NCLC group comments](#)).

ADDITIONAL PRIORITIES BY TOPIC

I. Prevent a COVID-19 tsunami of foreclosures, likely to be centered in Black and Latinx communities, and promote an inclusive recovery.

A. Ensure homeowners can access forbearance when facing a COVID-19 hardship.

1. Extend CARES Act forbearance protections to homeowners with COVID-19 hardships who have private market mortgage loans, including subprime and other high-cost loans, through joint agency guidance. ([HEROES Act](#)).
2. Require servicers to send notice to homeowners within 45 days of delinquency describing their COVID forbearance and repayment options. A significant number of delinquent borrowers have not accessed assistance, and borrowers must first know about options in order to request them. The mandate should include in-language notices for limited English proficient borrowers, beginning with Spanish.

B. Prevent avoidable foreclosures for COVID-affected homeowners.

1. Apply the foreclosure moratorium to the entire mortgage market. ([HEROES Act](#)).
2. Establish a *Housing Assistance Fund* to fund state foreclosure prevention programs that provide mortgage payment assistance and other home retention measures. ([S. 3620](#); [H.R. 7301 \(section 102\)](#); [HEROES Act](#)).
3. Require all mortgage companies, including servicers of portfolio and private label mortgages, through joint agency guidance to provide sustainable post-forbearance payment options to borrowers who can resume their payments and to those who need a loan modification with lower payments. ([HEROES Act and NCLC CARES Act testimony](#)).
4. For borrowers resuming their mortgage payments after a forbearance, require servicers to defer scheduled tax and insurance payments until the end of the loan along with the missed principal and interest payments and require servicers to spread escrow shortages over 60 months.
5. Create affordable loan modification and payment deferral options for USDA-direct loan borrowers, including those in foreclosure, in line with all other sectors of the mortgage market. ([NCLC issue brief](#)).
6. Require borrower protections when servicing of a loan is transferred to a new servicer, including mandatory and publicly available standard data and transfer plans and a dispute process that prevents borrowers from facing default because the new servicer did not get accurate information from the previous servicer. ([NCLC press release](#)).

- C. Provide for transparency and accountability in mortgage market oversight.
1. Reverse the CFPB and bank regulators' weakened approach to mortgage servicer supervision and enforcement during the COVID-19 emergency ([NCLC press release](#)) and issue joint CFPB and bank agency guidance establishing foreclosure moratorium, forbearance and post-forbearance standards for private loans except where prohibited by investor guidelines.
 2. Create an *Office of the Homeowner Advocate*, modeled after a similar and successful IRS office, that provides individual homeowners with a direct means of obtaining assistance to prevent foreclosures.
 3. Require collection and public reporting of loan-level COVID-related mortgage lending and performance data for government-backed loans ([H.R. 6794](#)) and in the broader housing market ([H.R. 6835](#)), including demographic and property location information. As one initial step, the CFPB and FHFA must ensure transparency and accountability in their Borrower Protection Program by making their data publicly available.
 4. Halt negative credit reporting during the pandemic. ([HEROES Act](#)).

II. Update and strengthen foreclosure prevention for FHA mortgages, the central homeownership program for underserved communities.

- A. Strengthen oversight of FHA foreclosure prevention. ([S. 2279/H.R. 3958](#)).
- B. Preserve HUD's individualized approach to loss mitigation and ensure that divorced and separated homeowners, including those who are survivors of domestic violence, obtain clear access to foreclosure prevention. ([Coalition comments](#)).
- C. Ensure that FHA conducts distressed asset sales only when demonstrably necessary to protect the insurance fund. The rules should require that all borrowers with loans included in sales be fully evaluated for FHA foreclosure prevention measures, that FHA conduct sales in a manner that promotes single-family homeownership and healthy neighborhoods, and that HUD include a "first look" for Neighborhood Stabilization Program grantees for real-estate owned (REO) sales. ([Coalition comments](#)).
- D. Restore language to the FHA form note to ensure that homeowners can avoid unnecessary foreclosures and obtain required hardship assistance. ([Coalition comments](#)).
- E. Establish stronger foreclosure protections for reverse mortgage borrowers, and provide reverse mortgage borrowers with COVID protections similar to those for "forward" FHA mortgages by deferring any property charges that went unpaid during a COVID-related hardship until the loan is due and payable. ([Coalition letter](#)).

III. Strengthen racial and economic justice in the mortgage market, including through language access, broader market access and better data collection and reporting.

- A. Establish a *Homeowner Affordability Fund* to promote homeownership for low-income and low-wealth borrowers and disinvested communities through new federal programs and grants to state and local governments for designated purposes, including small dollar mortgage loans, downpayment assistance, interest-rate buydowns, and home repairs for preserving homeownership.
- B. Require mortgage lenders and servicers to provide language access for borrowers with limited English proficiency, including through collection and transfer of language preference ([H.R. 4783](#)), provision of translated documents, and oral interpretation. ([Coalition comments to FHFA](#) and [Supplemental comments to FHFA](#)).
- C. Reverse the CFPB's HMDA rollback and withdraw the OCC's CRA rule.
- D. Reverse HUD's final rule on disparate impact standards, restore the Obama Administration's Affirmatively Furthering Fair Housing rule, and vigorously enforce fair lending and fair housing laws, including in new uses of data and algorithms.

IV. Promote affordable, sustainable mortgage lending, particularly for borrowers of color.

- A. Establish robust CFPB consumer protection Ability to Repay rules for Property Assessed Clean Energy (PACE) loans ([NCLC/NHLP comments](#) and [Coalition comments](#)). Government-backed loans should not be made on properties with liens secured by PACE loans until such consumer protection rules are in place.
- B. Ensure that any green home financing programs align with consumer protection and remain keyed to the borrower's ability to repay and the fair market value of the property. Additional measures to promote energy efficiency in the residential market can include expansion of weatherization, low-rate loans and rebates, subsidies from utilities, and updating of appliance efficiency standards.
- C. Prohibit predatory rent-to-own ([S. 571](#)) housing abuses.
- D. Set a deadline for the LIBOR transition, established by the CFPB along with the housing and banking regulators, and issue stronger guidance to the consumer credit industry addressing final preparations for the transition from LIBOR. LIBOR is the index for interest rates on more than 2.8 million adjustable rate and reverse mortgages, and clear guidelines are necessary to avoid market uncertainty, consumer harm, and potentially billions of dollars in related costs. ([Coalition comments to CFPB](#)).
- E. Ensure that the GSEs retain their public purposes.
- F. Preserve incentives for mortgage lenders to accurately disclose mortgage terms.

For more information, please contact NCLC staff attorney Alys Cohen (acohen@nclc.org).