



Ensuring Access to Sustainable Homeownership: 2022 Priorities

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As the effects of the COVID-19 economic crisis continue, foreclosure prevention and accessible lending are key housing priorities for 2022. Mortgage market data demonstrate the need for stronger policies.

Many struggling homeowners are not able to access affordable loan modifications.

A “first look” [Black Knight report](#) with January 2022 data found that foreclosure starts have already increased sharply. This rise will most likely continue, as over 850,000 borrowers are seriously delinquent but are not yet in foreclosure and 379,000 borrowers have finished loss mitigation but remain past due. Similarly, a [recent report from the Federal Reserve Bank of Philadelphia](#) finds that over half of the 950,000 homeowners who are over 90 days behind on mortgage payments and not in forbearance currently have no loss mitigation plan in place. Among homeowners with private-label and portfolio loans (around 30% of the mortgage market) and who are 90+ days delinquent, only 25% and 34% respectively are in loss mitigation options.

The substantial number of homeowners who are late on their mortgage payments but do not have an affordable repayment option in place highlights several concerns.

- **FHA mortgage servicer non-compliance.** Legal services attorneys have reported cases involving several large servicers of FHA loans in which homeowners were not offered the “streamlined” loan modification options—with limited paperwork—established by the program, requiring instead the submission of extensive documentation that may be a barrier to loan modification access.
- **Homeowner Assistance Fund support has not yet become widely available.** Homeowners who have exited forbearances and have not obtained new payment arrangements likely will need the help available from the Homeowner Assistance Fund coordinated by the U.S. Treasury Department. While the Administration’s American Rescue Plan authorized almost \$10 billion for the Homeowner Assistance Fund, as of March 17, 2022, only 30 states and territories were [accepting applications](#).
- **Private loans offer fewer loan modification options, even for loans sold by Fannie Mae and Freddie Mac.** Some portion of homeowners needing affordable loan modifications may be dealing with mortgage servicers who are not offering such options, either because the loan was made as a privately held loan where options are more limited or because it was a loan federally-backed by Fannie Mae or Freddie Mac and then sold in a bulk loan sale.

Communities of color face the greatest foreclosure prevention challenges.

Data for FHA loans, which are disproportionately used by Black and Latinx homeowners, highlight significant foreclosure risks in this sector. HUD’s [Neighborhood Watch database](#) shows that over 420,000 FHA homeowners are seriously delinquent. Among reverse mortgage homeowners, almost 30,000 of these older homeowners are in default on their property taxes, homeowners’ insurance, or other regular fees associated with owning their homes.

The [U.S. Census Bureau's Household Pulse Survey](#) (January 26- February 7, 2022) shows the greater risks of foreclosure faced by homeowners of color, in which 3.3% of white homeowners reported being in a household that was behind on mortgage payments, compared to 7.8% of Black homeowners and 6.1% of Hispanic or Latino homeowners. Latina and Black women are [more likely to fall behind](#) on rent or mortgage payments than white men, even with access to federal support programs. Homeowners with limited English proficiency also face particular challenges getting help from their mortgage servicers. According to the [American Community Survey's](#) five-year estimate for 2019, approximately 25.6 million individuals, approximately 8.4% of the U.S. population, are considered LEP because they speak English less than "very well." Approximately 83% of all LEP residents speak one of eight languages, with about 64% of the LEP population speaking Spanish.

Black homeownership remains far behind the rates for other groups and Black and Latinx applicants are much more likely to be rejected for a mortgage loan.

According to a report from the [National Association of Realtors](#), while the U.S. homeownership rate rose to 65.5% in 2020, the homeownership rate for Black consumers (43.4%) is lower than in 2010 (44.2%) and nearly 30 percentage points lower than the rate for white consumers (72.1%). Almost 62% of Asian people and 51% of Hispanic people are homeowners. Black and Hispanic applicants (7% each) were more likely to be rejected for mortgage loans than white (4%) and Asian (3%) applicants. According to [a recent Bloomberg analysis](#), during the recent refinance boom Black homeowners were rejected for mortgages at a much greater rate than white homeowners, with Wells Fargo rejecting more than half of Black applicants.

Housing Priorities for 2022

Strengthen CFPB COVID foreclosure prevention and mortgage servicing oversight.

- **HAF foreclosure pause:** The [Consumer Financial Protection Bureau](#) (CFPB) and the [federal housing agencies](#) should direct servicers to pause foreclosures for 60 days after being notified by a Homeowner Assistance Fund (HAF) program administrator that the borrower has applied and is conditionally eligible for assistance. Families should not lose their homes because of delays in payment of HAF funds for which they qualify.
- **Servicer supervision:** The CFPB should closely monitor the conduct of servicers in offering loss mitigation to borrowers exiting forbearance, including loss mitigation outcomes by race and language preference, and consider appropriate supervisory, enforcement and regulatory actions.
- **Zombie mortgages:** The CFPB should use its supervision and enforcement authority to impose penalties on servicers of "zombie" second mortgages that attempt to collect interest charged during a period when no servicer was sending periodic mortgage statements or that initiate foreclosure without complying with Regulation X early intervention and loss mitigation rules.
- **Servicing data:** The CFPB should work with other federal agencies to make servicing data more transparent and available to the public through expanded collection and reporting, including of data disaggregated by race, ethnicity, and language preference.

Ensure Homeowner Assistance Fund (“HAF”) programs are accessible and transparent.

- **Publication of approved plans:** The Treasury Department and the HAF administrators should [publish HAF plans](#) online as approved.
- **Data reporting:** The Treasury Department should collect and publicly report HAF implementation data by jurisdiction and by servicer, including demographic data disaggregated by race and language preference.
- **Program access:** HAF administrators should ensure broad and equitable program access by removing unnecessary eligibility barriers and collaborating with mortgage servicers, housing counselors, legal services advocates, and community-based organizations.

Expand FHA loss mitigation offerings and program oversight.

- **Finalizing the COVID loss mitigation waterfall:** HUD should [promptly finalize](#) the COVID-19 loss mitigation waterfall proposed in September 2021, which incorporates a 40-year term if needed to hit a payment target, to ensure that the modification program reaches people seeking pandemic relief before foreclosure.
- **Promote servicer oversight:** HUD should enhance oversight of servicers failing to comply with COVID-19 loss mitigation guidelines, including through enhanced data collection and reporting, to improve access to pandemic-related mortgage relief.
- **Absent co-borrowers:** HUD should expand [access to mortgage relief](#) for homeowners with absent co-borrowers due to divorce, separation or domestic violence.
- **Revised servicing defect taxonomy:** HUD should [establish a mortgage servicing defect taxonomy \(which is a document that categorizes servicing errors by severity and assigns potential penalties for those errors\)](#) with sufficient detail to spur meaningful loss mitigation examinations and remedies that address any harm to borrowers.
- **Loan sale regulations:** HUD should [finalize note sale and third-party sale regulations](#) to ensure homeowners whose loans are transferred have exhausted FHA options prior to sale, to establish strong standards for post-sale loss mitigation options and property disposition procedures, and to permit sales only where necessary for the health of the insurance fund.

Improve FHA reverse mortgage guidelines to preserve homeownership for older borrowers and surviving spouses seeking to age in place.

- **COVID-19 optional delay:** HUD should create a new [post-forbearance option](#) to allow reverse mortgage borrowers impacted by the pandemic to permanently defer past-due property charges. The COVID-19 Optional Delay would allow mortgagees to delay calling the loan due and payable for borrowers who owe up to \$25,000 in property charges and have a COVID-related hardship.
- **60-month repayment plans:** HUD should increase access to repayment plans by allowing 60-month plans regardless of whether the borrower had a prior repayment plan.
- **Repayment plans for higher balances:** HUD should make permanent the waiver that allows a borrower to be evaluated for a new repayment plan even if the borrower’s balance exceeds \$5,000.

- **Homeowner Assistance Fund:** HUD and the Treasury Department should ensure that HAF funds can be used to cure property charge defaults and address any impediments servicers raise to accepting these funds. Most crucially, HUD should authorize servicers to delay initiating foreclosure when a borrower has applied for HAF.
- **Servicer-borrower communication:** HUD and the CFPB should work together to improve servicer communications with borrowers, non-borrowing spouses, and heirs of reverse mortgage borrowers, including by coordinating a review of servicers' property charge default letters, due and payable letters, and other key servicer communications.

Expand loss mitigation access for federally-backed mortgages.

- **Note sale protections:** The Federal Housing Finance Agency (FHFA) should establish specific obligations for note sale purchasers to offer affordable loan modifications, including offers of a deferral and a streamlined modification for any homeowners impacted by the pandemic, for loans sold through the non-performing and reperforming loan sale programs by Fannie Mae and Freddie Mac (the Enterprises) and ensure sales are only used where necessary for the health of the Enterprise.
- **VA and USDA loss mitigation:** VA and USDA should make COVID-19 loss mitigation options available as part of the permanent waterfall of foreclosure prevention options.
- **USDA direct loan payment relief:** USDA should create a loan modification system for USDA direct loans that offers payment relief and makes home retention more viable.
- **VA and USDA data collection and reporting:** VA and USDA should publicly report COVID-19 loan performance data.

Promote language access in mortgage servicing and origination for borrowers with limited English proficiency.

- **Collection and transfer of language preference:** [FHFA should require](#) lenders and servicers to collect language preference information from borrowers, either by mandating the Supplementary Consumer Information Form (SCIF) or by reinstating the question on the Uniform Residential Loan Application, and should require this information to be transferred with the servicing file. FHA, VA, and USDA should follow suit for mortgages they insure. The [CFPB should require](#) mortgage servicers to collect and transfer language preference in the servicing file.
- **LEP homeowner access to loss mitigation:** The CFPB should closely monitor LEP borrowers' access to loss mitigation options, including phone metrics and successful loan modifications completed. The CFPB should also require mortgage lenders and servicers to implement [Language Access Plans](#) as part of fair lending compliance.
- **Industry use of translated forms:** FHFA, FHA, the CFPB and other federal agencies should work together to promote industry use of translated documents in origination and servicing.
- **Improving Language Access in Mortgage Servicing Act:** Congress should pass the [Improving Language Access in Mortgage Servicing Act](#).

Establish strong consumer protections for Property Assessed Clean Energy (PACE) loans and for other energy efficiency mortgage programs.

- **Ability to repay and other consumer protections:** The CFPB should issue a [strong proposed rule](#) ensuring that PACE loans are covered by TILA's protections, including the ability to repay rule. [States should adopt](#) strong consumer protections (with privately enforceable remedies) before PACE programs are implemented, including a consumer's ability to repay the PACE loan.
- **Restitution to harmed consumers:** States with active PACE programs, such as California, Florida and Missouri, should adopt a restitution program to help homeowners who have been harmed by fraud and misrepresentation in the PACE program.
- **Alignment of climate financing and consumer protection:** Congress and federal agencies should ensure that energy efficiency measures in housing finance are consistent with consumer protection.

Build a sustainable mortgage lending system centered on [racial justice](#).

- **First-generation down payment assistance:** Congress should pass the Build Back Better Act, or the equivalent, with key rental, homeownership and homelessness provisions, such as [down payment assistance](#) and housing counseling for first-generation homebuyers, who are disproportionately people of color.
- **Small dollar mortgage demonstration program:** HUD should create an FHA-Insured Small Dollar Mortgage Demonstration Program to expand small-dollar mortgage options to homebuyers seeking to purchase affordable homes priced at or below \$100,000.
- **Neighborhood investment:** Congress should invest in affordable housing through passage of the [Neighborhood Homes Investment Act](#), including the rehabilitation and repair of distressed properties in communities suffering from economic disinvestment.
- **Withdrawal of the Seasoned Qualified Mortgage rule:** The CFPB should initiate a new rulemaking, [as it indicated it was considering](#), to reconsider the seasoned Qualified Mortgage rule, which provides unwarranted protection to lenders from liability where a struggling homeowner cannot afford the loan but is making payments by borrowing money or taking other unsustainable measures to supplement available income.
- **Impact of the general Qualified Mortgage rule:** The CFPB should monitor implementation of originations and loan performance under the new general Qualified Mortgage rule, which presumes that loans comply with the ability to repay requirement based only on the price of the loan. It should collect data, including demographic information, regarding loan performance to determine the extent to which the new rule is resulting in unaffordable mortgage loans, and should report this data publicly.
- **Cash flow underwriting and residual income:** The CFPB should study and gather research on alternative mechanisms for determining a mortgage borrower's ability to repay, such as cash flow underwriting and residual income.

- **Appraisals:** The federal housing agencies, the Enterprises, the appraisal industry, and Congress should adopt measures to eliminate racial bias and disparities in the valuation of residential real estate.
- **LIBOR update:** The Federal Reserve Board should adopt rules implementing the [Adjustable Interest Rate \(LIBOR\) Act](#) to protect consumers from unreasonable and unnecessary contract changes when note holders transition from the LIBOR to a new benchmark index.

Promote affordable manufactured home lending.

- **Resident-owned communities:** States and federal agencies should adopt policies that promote transformation of manufactured home communities into stable forms of affordable housing by promoting [residents' purchase](#) of their communities, so that the residents own the land, not just their homes.
- **Consumer protections for manufactured home owners:** States and federal agencies should create safeguards against closure of manufactured home communities and protection for residents against the unwarranted eviction of homeowners, denial of fundamental freedoms such as the right to hold meetings, and confiscatory rent increases.
- **Real property titling:** States should allow manufactured homes to be titled as real property, to enable owners of the homes to have access to mainstream mortgage financing, and federal agencies should encourage states to do so.
- **Fund resident ownership:** Congress and federal agencies—the GSEs in particular— should direct federal dollars into preservation of manufactured home communities and resident purchase of their communities, not into purchase by investors looking for a “cash cow.”

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