Connecticut Fair Housing Center

The Jerome N. Frank Legal Services Organization
YALE LAW SCHOOL
Housing Clinic

By Electronic Mail

May 19, 2020

Governor Ned Lamont
State Capitol
210 Capitol Avenue
Hartford, CT 06106

Dear Governor Lamont:

We work for the only nonprofits in the state who represent homeowners facing foreclosure. Many homeowners cannot and will not be able to make their mortgage payments due to the COVID-19 pandemic. We ask you to issue an Executive Order providing real relief to homeowners by requiring all the state-chartered banks and credit unions, along with all the nonbank mortgage servicers licensed and regulated by the Department of Banking, to offer both:

(1) forbearance options no worse than the federal CARES Act; and
(2) post-forbearance loan workout options no worse than what Fannie Mae and Freddie Mac require from their servicers.

As detailed in the attached memorandum, you have the legal authority to issue this Order because of today's exigent circumstances.

Mortgage Delinquencies Will Soon be Worse than at the Peak of the Great Recession.
National "forbearance" numbers (paused mortgage payments) – 8.8% of all mortgages – tell us that more homeowners will be seriously delinquent (90+ days behind) by August than at the peak of the Great Recession.[1] We do not have Connecticut-specific figures. But we believe they are worse than the national numbers given our worse-than-national-average COVID-19 infection rate, unemployment filings, and pre-pandemic housing market.

Few homeowners will be able to make up their missed payments when their forbearances end. Nor will merely shifting those arrears to the "back end" of their mortgage solve their problem. Given consumers' reluctance to patronize businesses as they had before and forecasts that 40%

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[1] http://www.mortgagenewsdaily.com/05152020_covid_19_forbearance.asp. The figures in this article mostly reflect homeowners who have fallen behind and obtained mortgages since the onset of the pandemic. It excludes many of the mortgages that were already seriously delinquent as of February 2020. See https://www.corelogic.com/insights/loan-performance-insights-report.aspx?WT.mc_id=crlg_200211_UhwD1 for February 2020 figures (1.7% in Connecticut). Connecticut's highest serious delinquency rate during the Great Recession was 8.13% in the first quarter of 2010. https://www.courant.com/business/hc-xpm-2011-02-17-hc-mortgage-delinquency-0218-20110217-story.html.

of the jobs that were lost might never return,[2] old monthly mortgage payments will no longer be affordable. Furthermore, many of these homeowners have tenants who still cannot pay rent.

The Federal Government Only Solved Part of the Problem. You Can Help Do More.
The bipartisan CARES Act allowed homeowners with federally backed mortgages to receive up to 360 days of forbearance. The federal administration has since ensured that homeowners would have post-forbearance options like loan modifications that provide for lower monthly payments. These federal actions, however, do not cover thirty percent of the housing market.

By taking the actions we urge, you can fill much of the gap for Connecticut homeowners. The only subset of people would need federal action are those with mortgages (1) owned or serviced by federally chartered banks and credit unions and (2) not covered by the CARES Act.[3]

The Approach Taken in March Was Flawed.
We recognize that your administration tried to address some of these issues in March. As described in your press release:[4]

> Governor Ned Lamont today announced that his administration has reached an agreement with over 50 credit unions and banks in Connecticut to offer mortgage relief to the state's residents and businesses who continue to face hardship caused by the global COVID-19 pandemic.

The agreement provided for 90-day forbearances (rather than the CARES Act's 360 days), a 60-day moratorium on new foreclosures, and other minor provisions. We do not know if banks and credit unions all followed the forbearance and other provisions of the agreement. We do know that ten institutions, as part of their first fiscal response, broke the foreclosure moratorium:[5]

Institution	Docket No.
Charter Oak Federal Credit Union	KNL-CV-20-6046319-S
Citizens Bank[6]	FST-CV-20-6046584-S
	FST-CV-20-6046434-S
	NNH-CV-20-6102793-S
	MMX-CV-20-6028042-S
JPMorgan Chase	FST-CV-20-6046451-S

[2] https://www.washingtonpost.com/business/2020/05/07/nearly-80-percent-laid-off-workers-believe-they-will-return-their-old-job-post-ipsos-poll-finds/

[3] We will work with the federal delegation and peers in other states to advocate for this relief whether through legislation or regulation via the OCC and NCUA.

[4] https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/03-2020/Governor-Lamont-Announces-Mortgage-Payment-Relief-During-COVID19-Crisis

[5] Some institutions might claim that they had already referred these cases to their counsel at the time of the agreement, and that means they "essentially had complied" with the moratorium. That would not be an acceptable excuse or justification. Filing a foreclosure action after the announcement means that these institutions either cannot control their lawyers or ignored your announcement.

[6] Citizens withdrew these foreclosures after one of our callers filed a complaint with DOB.

	FBT-CV-20-6095924-S
	DBD-CV-20-6035883-S
	NNH-CV-20-6102906-S
Litchfield Bancorp	UWY-CV-20-6054856-S
Newtown Savings Bank	DBD-CV-20-6035891-S
PeoplesBank	HHD-CV-20-6127802-S
People's United Bank	HHD-CV-20-6127043-S
Savings Bank of Danbury	DBD-CV-20-6036078-S
	DBD-CV-20-6036080-S
	UWY-CV-20-6054791-S
Union Savings Bank	UWY-CV-20-6054763-S
Webster Bank	FST-CV-20-6046583-S[7]

In other words, homeowners and businesses heard their governor announce a 60-day break on foreclosures. Eighteen foreclosures were then filed, with hardly any consequences for the filers.

There was talk at the March 31 press conference about putting missed payments at the back end of mortgages once forbearance ended. But nothing was required. Nor, as discussed above, would that option suffice for many borrowers. Regardless, all the homeowners who received a short-term forbearance are now just as close to foreclosure as they would otherwise be.[8]

The Approach Taken in March Should Not Be Repeated; An Executive Order Is Needed.
While well-intentioned, because the approach in March relied on an agreement with the Connecticut Bankers Association and the Credit Union League of Connecticut rather than each of the members,[9] it lacked member buy-in and enforceability. It also lacked participation from all the nonbank entities who service nearly half of all mortgages.[10] The structure and voluntary nature of the approach left too many homeowners without relief.

[7] This action has been withdrawn for reasons unknown. Webster may have withdrawn the action voluntarily after discovering it had broken the moratorium. Or the homeowner may have reinstated and, in doing so, paid Webster for the costs and fees of the improper foreclosure.

[8] Federal regulations already require servicers to wait till 120 days after the first default to commence a foreclosure. The CFPB has said that a payment missed due a forbearance agreement nevertheless counts as a default for purposes of the 120-day rule, meaning that a 90-day forbearance would not extend that 120-day period. https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf

[9] We understand that the terms of the agreement are only on the Department of Banking's website rather than some sort of separate, signed document.

[10] https://www.reuters.com/article/us-usa-banks-fsoc-idUSKBN1Y82XM (Dec. 9, 2019). Because the largest CBA members struggled to service mortgages last decade – see, e.g., the 2012 National Mortgage Settlement in which Connecticut played a critical role – they decided to substantially reduce their servicing portfolio over the last several years by transferring servicing to nonbank servicers.

Given these issues and our experience representing homeowners, we know that going back to the same industry group, through its associations[11] or the institutions themselves, would be futile. We also know that nonbank servicers need to be part of the next steps. Many of their customers struggled to survive subprime loans or originally had federally backed loans but lost that protection when the government auctioned off their mortgages in the past few years. We also know from our experience that homeowners with nonbank servicers are disproportionately Black and Latinx and live in communities disproportionately affected by the pandemic.

Further, the nonbank segment would benefit from uniform adoption of the federal workout programs.[12] Partly because nonbanks struggle to offer widespread forbearance due to their arrangements with their investors,[13] you need to require that they provide relief to homeowners.

Conclusion

We ask that you issue the Executive Order described on page 1. Further, to ensure the Order is effective, please empower (1) DOB to enforce the Order and (2) consumers to seek relief in court when their servicers fail to comply with the Order.

Please know we greatly appreciate your time and attention to this matter. Please do not hesitate to contact us for details and draft language for such an Order.

Sincerely,

J.L. Pottenger, Jr.
Nathan Baker Clinical Professor of Law
at Yale Law School

Jeffrey Gentes
Connecticut Fair Housing Center

Supervising Attorneys, Housing Clinic, Jerome N. Frank Legal Services Organization[14]

Enclosure

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[11] We already asked the associations to persuade their members to withdraw the improper foreclosures. This approach failed.

[12] https://milkeninstitute.org/sites/default/files/reports-pdf/COVID19%20Forbearance%20Relief%20and%20PLS-FINAL-200505.pdf

[13] https://www.wsj.com/articles/the-mortgage-market-never-got-fixed-after-2008-now-its-breaking-again-11588977078?mod=hp_lead_pos3

[14] This letter does not reflect the institutional views of Jerome N. Frank Legal Services Organization, Yale Law School, or Yale University.